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A TEXT-BOOK IN CIVICS

FOR

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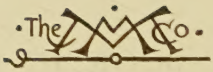

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THE AMERICAN FEDERAL STATE

ITS HISTORICAL DEVELOPMENT GOVERNMENT AND POLICIES

BY

ROSCOE LEWIS ASHLEY

AUTHOR OF "AMERICAN HISTORY," "AMERICAN GOVERNMENT," ETC.

REVISED EDITION

New York
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PREFACE

THIS Civics text-book is intended not only to describe the organization and work of the different American governments, but to make prominent the relation of the citizens to the governments and to each other. It has been thought that this could be done best by considering the subject from the standpoint of the *State:* that is, of the whole body of citizens considered as an organized unit rather than from the point of view of government or of the individual citizen. This made it necessary, first, to explain some of the more important principles of political science with practical applications; second, to show how the American Federal State became what it is; third, to describe the national, state (commonwealth), and local governments; and, fourth, to give some idea of the policies of the State in regard to great public questions and of the problems that confront it.

In the historical portions of the book no attempt has been made to touch upon more than the salient events, each of which is considered not so much for any intrinsic worth as for the light that it may throw upon the development of nationality within the United States. For details and for subjects omitted altogether, the reader must be referred to the many excellent manuals of American History. The discussions upon government assume that the student needs a clear conception of the real character and actual working of our governments much more than he does a knowledge of the government as it is supposed to be. Technical descriptions of governmental machinery have, therefore, been subordinated to practical accounts of what the governments do and how they do it; and, for the

same reason, the methods of administration have been given less space than the purposes which administrative measures have sought to attain. Where recognized defects exist which can and ought to be remedied through an awakened public interest, the author has called attention to them, noting the nature of the flaw, and mentioning ways in which it may be removed.

The author wishes to express his obligation to a large number of writers and friends to whom he is indebted for suggestions or material. In revising the book, the text has been corrected to date, but no attempt has been made to add new references throughout the book. The importance of natural resources as a public question has been recognized in Chapter XXIX. Suggestions or corrections of errors will be received gladly from those who have occasion to use the book.

PASADENA, CAL.,
APRIL, 1910.

SUGGESTIONS

MATERIALS

Chapters devoted especially to government.

As this manual covers so much more ground than the conventional civics text-book, and in consequence contains more material than some teachers desire or are able to use, many may prefer to confine themselves as far as possible to the chapters devoted especially to government. To such teachers, and those who, because the time allotted to Civics is less than one year, must omit parts of the book, the author would suggest that chapters I to V inclusive be followed directly by Part II and chapters XXII and XXIII. It may also be advisable for a few teachers to omit the more difficult sections within these chapters, although the value of general or theoretical discussions before classes take up the study of a subject in detail is not to be lightly estimated if time is not too limited or the pupils too immature.

Comparative scarcity of materials in civics.

The use of materials for work outside of the text-book has fortunately become much more general than a few years since ; but it is probably true that there has been less progress in this particular in civics than in American history. Less attention has been paid to collecting documents and sources which would throw light upon American government to-day than has been devoted to placing in compact form a few of the most useful original sources of history. There are, nevertheless, a great many papers and pamphlets obtained at slight cost which afford ample opportunities to study certain phases of the organization or work of government at first hand. The books devoted to a study of political and civil institutions are by no means so numerous

as the political, constitutional, and narrative histories of the United States, but a few are of exceptional merit, and a valuable civics library can therefore be obtained for a moderate sum.

Constitutions, codes, and charters.

Every class should be provided with several copies of the state constitution, and if possible every member should have one in his possession for constant reference. Most of the states publish in pamphlet form copies of the constitution, which can be obtained for class room use *gratis* or at a reasonable cost. At least one copy of the state political code which gives an extended account of the state and local governments should be easily accessible, provided of course the laws of the state have been codified. If the class belongs to a city high school, it will be desirable to have for individual and class use a number of copies of the city charter.

Registers of officials.

The Official Congressional Directory, issued yearly under the direction of the clerk of the printing records, will be sent upon application, and is particularly useful for the brief biographies of members of Congress and the summaries of the duties performed by the different bureaus of the executive departments. Registers of state officials with information relative to public institutions are issued in a majority of the states, and can usually be obtained through the representatives of the senatorial or assembly district. Reports of national or state bureaus and commissions are usually published annually, and may be of use in the study of some special subject.

Statistical reports.

Statistical information of value can be procured from the proper officials. For example, reports of the state controller, of the county clerk or auditor, of the city auditor or treasurer, are published at frequent intervals and give information regarding the assessment of property, the tax rate, receipts and expenditures summarized and in detail. Several copies of each can probably be obtained without difficulty. Comparative tables showing the financial statistics of the different states for 1890, 1895, and 1900 are pub-

lished by the New York State Library for ten cents a number. Similar statistics for the largest cities are gathered by the United States Department of Labor and incorporated in their bulletins, *e.g.* that for September, 1900. Information concerning the finances of the national government, the amount of trade, election figures, besides reviews of legislation for the previous year, party platforms, lists of national officials past and present, and a multitude of other subjects are contained in the political almanacs issued yearly for twenty-five cents a number by different newspapers. A copy of at least one for the current year is indispensable.

Sample ballots and assessors' "statements."

Class-room work can be made to seem more real by placing in the hands of each pupil papers in whose use he is likely to be especially interested. It is easy to get from the city or county clerk samples of unused but cancelled ballots for some previous election. The tax assessors are almost always more than willing to furnish teachers with a suitable number of the "statements" which assessable citizens are obliged to fill out and return each year, while blanks upon which the collectors make out their receipts are readily furnished by those officials. Blank indentures, mortgages, warrants, and other legal papers are obtainable at the book stores or from lawyers at but slight expense.

References to materials.

As much use as possible should be made of the school library and of other libraries or sets of magazines to which the pupils have access. Some instruction should be given in the use of periodical indexes and of such bibliographies as may be obtainable. The latter should include Channing and Hart's *Guide to the Study of American History;* Hart's *Manual of American History, Diplomacy and Government;* Hart's *Actual Government*, for references at the beginning of chapters; Ashley's *American History* and Ashley's *American Government*, both of which have numerous marginal references, studies, and topics more recent than most of those in this book. For the study of topics in particular books, the attention of the pupils should be recalled con-

stantly to all time-saving devices, such as the use of the table of contents and of the index.

Essentials of a school library.

In selecting books for a school library, it is more important to have several copies of the best books than a larger number of titles with too few duplicates for class use. If possible, every student should have a copy of some good high school history of the United States, at least two different authors being represented in each class. In advanced classes, students will find it an advantage to have individual copies of the abridged edition of Bryce's *American Commonwealth*, or Hart's *Actual Government*, the two indispensable books on government. Any good library must contain several copies of these books and copies of Reinsch's *Readings on American Federal Government*, and Beard's *Readings in American Government and Politics*, the latter covering more subjects, although it is shorter.

For class use the following libraries may be suggested: —

A SMALL LIBRARY

Elson, *History of the United States.* Macmillan. $1.75.

Bogart, *Economic History of the United States.* Longmans. $2.00.

MacDonald, *A Documentary Source-Book of American History.* Macmillan. $1.75.

Bryce, *The American Commonwealth*, abridged edition. Macmillan. $1.75. With topics and questions by Clark in *Outlines of Civics.* 75 cents.

Hart, *Actual Government as Applied under American Conditions.* Longmans. $2.00.

Beard, (ed.), *Readings in American Government and Politics.* Macmillan. $1.75.

A FAIR-SIZED LIBRARY

The books given above and the following: —

Wilson, *The State.* Heath. $2.00.

Macy, *The English Constitution.* Macmillan. $2.00.

Johnston, *American Politics.* Holt. 80 cents.

Hart (ed.), *Epochs of American History*, including Thwaites, *The Colonies;* Hart, *Formation of the Union;* Wilson, *Division and Reunion.* Longmans. $1.25 each.

Cambridge Modern History, Vol. VII. Macmillan. $4.00.

HART, *American History as Told by Contemporaries.* Macmillan. 4 volumes. $2.00 each.

CHANNING and HART, *Guide to American History.* Ginn. $2.00.

HART, *Manual of American History, Diplomacy and Government.* Harvard.

THE AMERICAN NATION, including HOWARD, *Preliminaries of the Revolution;* MCLAUGHLIN, *Confederation and the Constitution;* TURNER, *Rise of the New West;* LATANÉ, *United States as a World Power.* Harpers. $2.00 each.

FISKE, *Critical Period of American History.* Houghton. $2.00.

BURGESS, *The Middle Period.* Scribners. $1.75.

American Year Book. Appleton. $3.50.

KAYE, *Readings in Civil Government.* Century. $1.20.

MACDONALD, *Select Documents of American History* (1776–1861). Macmillan. $2.25.

The Federalist. Several editions from $1.50 to $2.25.

CLEVELAND, *Growth of Democracy.* Quadrangle Press. $2.00.

SCHOULER, *Constitutional Studies.* Dodd. $1.50.

COOLEY, *Principles of Constitutional Law.* Little. $2.50.

HARRISON, *This Country of Ours.* Scribners. $1.25.

PLEHN, *Public Finance.* Macmillan. $1.60.

BRYCE, *American Commonwealth.* 2 volumes, new edition. Macmillan. $4.00.

BEARD, *American Government and Politics.* Macmillan. $2.10.

FAIRLIE, *National Administration.* Macmillan. $3.00.

LARNED (ed.), *History for Ready Reference*, Vols. VI. and VII. Nichols. $11.00.

BLISS (ed.), *The New Encyclopedia of Social Reform.* Funk. $7.50.

REINSCH (ed.), *Readings on American Federal Government.* Ginn. $2.25.

WILLOUGHBY, W. W. (ed.), THE AMERICAN STATE SERIES, including WILLOUGHBY, W. W., *American Constitutional System;* GOODNOW, *City Government;* MACY, *Party Organization;* FINLEY and SANDERSON, *American Executive;* REINSCH, *American Legislatures;* BALDWIN, *American Judiciary;* WILLOUGHBY, W. F., *Territories and Colonies;* FAIRLIE, *Local Government.* Century. $1.25 each.

JOHNSON, *American Railway Transportation.* Appleton. $1.50.

HENDERSON, *Dependents, Defectives, Delinquents.* Heath. $1.25.

GAUSS, *The American Government.* Hamersly. $5.00.

MCLAUGHLIN and HART (eds.), *Cyclopedia of American Government.* 3 volumes. Appleton. (In preparation.)

A LARGE SCHOOL LIBRARY

The books given above and the following: —

LALOR (ed.), *Cyclopedia of Political Science.* 3 volumes. Maynard. $15.00.

BLUNTSCHLI, *Theory of the State.* Macmillan. $3.50.

MEDLEY, *English Constitutional History.* Macmillan. $3.25.

MADISON, *Journal of the Constitutional Convention.*

CURTIS, *Constitutional History of the United States.* 2 volumes. Harpers. $6.00.

THORPE, *Constitutional History of the American People.* 2 volumes. Harpers. $5.00.

SEMPLE, *American History and its Geographic Conditions.* Houghton. $2.50.

DUNNING, *Civil War and Reconstruction.* Macmillan. $2.00.

STANWOOD, *History of the Presidency.* Houghton. $2.50.

JENKS, *Governmental Action for Social Welfare.* Macmillan. $1.00.

SEAGER, *Social Insurance.* Macmillan. $1.00.

WRIGHT, *Industrial Evolution of the United States.* Flood. $1.00.

BOUTWELL, *Constitution at the End of First Century.* Ginn. $2.50.

BURGESS, *Political Science and Comparative Constitutional Law.* 2 volumes. Ginn. $5.00.

DALLINGER, *Nominations for Elective Office.* Longmans. $2.00.

OBERHOLTZER, *Referendum in America.* Scribners. $2.00.

MACE, *Method in History.* Ginn. $1.00.

WOODBURN, *Political Parties and their Problems.* Putnams. $2.00.

OSTROGORSKI, *Democracy and the Party System.* Macmillan. $1.75.

MERRIAM, *Primary Elections.* University of Chicago. $1.25.

FORD, *The American Citizen's Manual.* Putnams.

FAIRLIE, *Municipal Administration.* Macmillan. $3.00.

ZUEBLIN, *American Municipal Progress.* Macmillan. $1.25.

ROWE, *Problems of City Government.* Appleton. $1.50.

BULLOCK (ed.), *Selected Readings in Public Finance.* Ginn. $2.25.

WILSON, *Congressional Government.* Houghton. $1.25.

MCCONACHIE, *Congressional Committees.* Crowell. $1.75.

COOLEY, *Constitutional Limitations.* Callaghan. $6.00.

HOWARD, *Local Constitutional History.* Johns Hopkins. $3.00.

MALTBIE, *Municipal Functions.* New York Reform Club. 50 cents.

GOODNOW, *Municipal Problems.* Macmillan. $1.50.

WINES and KOREN, *The Liquor Problem in its Legislative Aspect.* Houghton. $1.50.

WARNER, *American Charities.* Crowell. $1.75.

ADAMS, *The Science of Finance.* Holt. $3.50.

LAUGHLIN, *Bimetallism in the United States.* Appleton. $2.25.
JENKS, *The Trust Problem.* Doubleday. $1.00.
STIMSON, *Labor in its Relation to Law.* Scribners. 75 cents.
STIMSON, *Popular Law Making.* Scribners. $2.50.
FOSTER, *A Century of American Diplomacy.* Houghton. $3.50.
TAUSSIG, *Tariff History of the United States.* Putnams. $1.25.
FOSTER, *American Diplomacy in the Orient.* Houghton. $3.50.
FOSTER, *The Practice of Diplomacy.* Houghton. $2.50.
COOLIDGE, *The United States as a World Power.* Macmillan. $2.00.
TAFT, *Present Day Problems.* Dodd. $1.50.
WILSON, *Constitutional Government in the United States.* Houghton. $1.25.
WILLOUGHBY, *The Supreme Court.* Johns Hopkins. $1.25.
VAN HISE, *Conservation of Natural Resources.* Macmillan. $2.00.

METHODS

Text-book work, and indirect reviews.

Although a text-book in Civics should never be followed as closely as those in more definite and less practical subjects, the students should obtain from the text definite information as a working basis for additional study before they begin extensive outside investigation. Attention cannot be recalled too frequently to the need, and to the practical value, of contantly reviewing subjects that have already been studied, whenever those earlier subjects are connected at all closely with the topic under consideration.

The use of suggestive questions.

As the formal study of a text alone would be too lifeless a subject for any class in Civics, the author has given numerous suggestive questions (those under 1, 2, 3, etc.) which may save some of the teacher's time and provide material for thought or investigation work by the students. No class would wish, or would be able, to examine all of these questions.

The use of present-day questions.

A large percentage of the present-day questions (those under heads i, ii, iii, etc.) can be answered by assigning the sets to different pupils, each pupil having at least one set for which he is held responsible. The practical nature of the subjects considered, and the ease with which most of the

answers may be found, will undoubtedly quicken and maintain the interest of the pupils better than may be possible with the thought questions.

Collateral reading and short papers.

Additional outside work which should be undertaken to some extent in every class is of three kinds: (1) general collateral reading; (2) short papers upon topics of a limited scope; and (3) longer papers requiring considerable preparation. For the collateral reading the marginal references will furnish abundant material unless the teacher desires longer accounts than those mentioned. These marginal references will also frequently serve as an aid in answering some of the thought questions, and may be made the basis of the short papers or class talks which constitute the second kind of outside work. In the preparation of these papers the pupils should never be permitted to confine themselves to a single book unless it is unavoidable, but care should be taken that they use several and use them properly. Unless the pupils are accustomed to work of this kind, however, they should be introduced to it gradually. The first paper can be based upon two comparatively simple narratives, the pupil not being expected to give authorities for any of his statements. The second one might well deal with a more difficult topic, but still with no attempt to give specific references. But for all subsequent studies of this nature where the results of his investigation are embodied in an essay, or even when they are given orally as a report to the class, he should be asked to take and preserve notes upon what he has read, which should give not only statements, but references to the book and the page. These references should be repeated in his writing, that is, he should be asked to give author, book, and page reference for any important fact mentioned by only one anthority he consulted, or for any fact about which the statements made by the various historians disagreed.

Longer theses.

A report or a short paper may be required every week or two, but there should be no attempt to have in one year more than two of the longer essays, which employ much the

same methods with the expectation of going quite deeply into some subject. Moreover, the pupil should not be called upon for any short papers or for many reports while the longer one is being prepared. The accounts to which the pupil may be referred should be both longer and more numerous than those previously used. Some of the sets of references given at the end of each chapter may serve the purpose ; or, if library facilities are limited or other subjects are preferred, the teacher may ask the pupil to select a list of references upon some topic which is to be carefully revised by the teacher before real work is begun. So far as possible, the pupils should make a provisional outline or topical analysis to be used as a framework for the essay, and after the paper is completed this should be altered so that it correctly represents the topics treated. This topical analysis, after submission to the teacher, is to be placed upon the board before the paper is read, or, if it can be done, mimeograph copies should be placed in the hands of every pupil. In these papers as in the shorter ones, the authorities with book and page should be given whenever necessary ; but the extent to which the other pupils should be compelled to take notes upon these papers and reports must be dictated by the time and other limitations upon the class.

Intensive study of particular periods in class.

The real purpose of the work described in the two preceding paragraphs is the training of the individual pupil in the use of references and in collecting the results of his research ; its value to the class as a whole is purely incidental. But this is only partially true of the study connected with the questions at the end of each chapter, and still less the case with oral reports from marginal references which supplement the text upon some point of more than usual interest. In the following suggestions for intensive study in the class room, it is believed the class as a whole can be given substantial assistance by showing them how to compare different accounts, to reconcile, if may be, conflicting statements, and to determine what amount of truth

or error lies in each. A good period for study is that immediately preceding the Revolutionary War, covering the fifteen years from 1760 to 1775. Upon this there are a number of excellent accounts of moderate length, representing several different points of view, *e.g.* Hart's *Formation of the Union*, Sloane's *French War and Revolution*, Channing's *Student's History* and the *United States*, 1765–1865, Lodge's *Colonies*, Fiske's *American Revolution*, Vol. I, Lecky's *American Revolution*, Green's *Short History of the English People*, Gardner's *History of England*, etc. If a dozen or more copies of these different books can be obtained and each pupil held responsible for the book assigned him (an outline being used to denote what topics will be considered), he will be obliged to find out what his book says on each topic and to discard what it says on others not taken up. With the facts and opinions from these books before it, the class will then have an opportunity to note down and later compare these accounts. Constant watchfulness will be necessary to see that the study does not degenerate into a mere comparison of differences for the sake of finding what differences there are, rather than for the purpose of ascertaining the truth about the topic under discussion.

Use of tables and outlines.

It is frequently found that the best idea of a subject is gained by placing it in the form of a table or outline. When the data belong to several sources that are contemporaneous, the table may be used to make a comparative analysis; when they follow each other in historical sequence, an outline will be necessary. Both can be used to simplify the work either of the class or of individuals, and the gain in a better grasp of the subject and in convenience for review will usually more than repay the time spent on the analysis. The danger comes from placing too great dependence upon the method, particularly with the outline. The relation existing between one event and another may not be indicated, and the analysis may be nothing more than a com-

bination of unimportant facts, while the one important truth is missed.

Mental training rather than acquisition of information the aim.

In conclusion it may be well to urge that the methods adopted in the recitation and in outside study should have as their principal aim the training of the mind and not the acquiring of information. More than anything else must the pupil be taught to discriminate between what is important and what is unimportant, discarding what is of no value and making an effort to retain the few things worth while. It is well not to forget that in history and civics facts are absolutely essential for any training that is worthy of the name, and that an accurate knowledge of facts is a help of the highest value without which reasoning is useless and judgment little better than prejudice. Facts should, therefore, not be despised nor neglected, nor should the importance of memorizing them for temporary or permanent use be minimized, but not even those that deal with the things of to-day should be made an end in themselves, but a means to acquire that knowledge of the trend of events and of the nature of our civil governments which shall enable us to see things as they are and do what is best for our country's good.

All of these suggestions have been tested by the author with classes varying in size from five to thirty, and he believes that the results have been satisfactory.

ABBREVIATIONS

COMMONLY USED IN REFERENCES

A. A. A.	Annals of the American Academy of Political and Social Science.
A. H. A.	Reports of the American Historical Association.
At. Mo.	*Atlantic Monthly.*
Bryce	Bryce, *The American Commonwealth*, abridged edition.
Channing	Channing, *Students' History of the United States.*
Harper's	*Harper's Monthly Magazine.*
Hinsdale	Hinsdale, *The American Government.*
J. H. U. S.	Johns Hopkins University Series in Historical and Political Science.
Lalor	Lalor (ed.), *Cyclopedia of Political Science.*
P. S. Q.	*Political Science Quarterly.*
N. A. R.	*North American Review.*
Story, Commentaries	Story, *Commentaries on the Constitution.*
Amer.	American.
Cong.	Congressional.
Const.	Constitution.
const'l	constitutional.
econ.	economy or economic.
Eng.	English.
hist.	historical or history.
jol.	journal.
pol.	political.
R.	Review.
Soc.	Sociology.

Unless otherwise indicated, all reference are to *pages*, and to the last edition published before 1901.

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FOR

HIGH SCHOOLS AND COLLEGES

THE AMERICAN FEDERAL STATE

CHAPTER I

SOME ELEMENTS OF POLITICS

General References

Hinsdale, *American Government.* Introduction. A good summary.
Willoughby, *Rights and Duties of American Citizenship.* Part I. An excellent elementary discussion.
Wilson, *The State.* Historical and comparative accounts of ancient and modern States. Very useful.
Bluntschli, *Theory of the Modern State.* The best book covering the whole subject.
Crane and Moses, *Politics.*
Burgess, *Political Science and Comparative Constitutional Law.* 2 volumes. Very valuable.
Woolsey, *Political Science.* 2 volumes.
Pollock, *Introduction to the History of the Science of Politics.*
Sidgwick, *Elements of Politics.*
Willoughby, *An Examination of the Nature of the State.*
Smith, *Theory of the State.*
Lieber, *Civil Liberty and Self-Government.*
McKechnie, *The State and the Individual.*
Goodnow, *Comparative Administrative Law.* 2 volumes.
Lalor, *Cyclopedia of Political Science*, under the different subjects treated.

From small simple communities to large complex ones.

1. Development of Political Societies. — Since the earliest historical periods men have been accustomed to associate with one another. At the first there would be only a few who, because they were related by blood or lived near each other, felt they were bound together on account of

common interests and usually to avoid common dangers. In these primitive little societies there was ordinarily some one man who was looked upon as leader. Sometimes it was his age, sometimes his position by birth, and often his selection by his fellows that made him the head man, but in every case the members of the society felt bound to treat him with respect and obey his commands. But they were also bound to one another and realized that each one owed something to every other because they were members of the same society. As these societies gradually became more settled, they began to have different and wider interests. In time this led to the union of several of the smaller societies in one large one, or in the absorption of several by the most powerful. Gradually families became clans, clans became tribes, and tribes became races, each with a government of its own. Everywhere the process was going on, the organization of the society becoming more perfect as the members became more civilized. With increase of population it was necessary to mark off the territorial limits that should separate one people from another. These boundaries tended to become more or less permanent, and the government as well became less subject to change. What changes occurred were due to the union or incorporation of these smaller political societies into larger ones till great nations were formed.

Scientific use of the word *State*.

Burgess, *Pol. Science*, I, 49–57.

Bluntschli, *Theory of the State*, 15–23.

2. Definitions of the State. — In modern times it has been customary to call certain of these political societies States. This name applies to any body of people occupying a fairly definite territory with an organized government, who are in no essential subject to any outside power. Or we may put it briefly, and say that *a State is an independent political society*. In this sense, it would be incorrect to speak of the state of New York or Ohio; for while these "states" are without question political societies, a great many interests of their members are cared for by a government outside the "state" or commonwealth. On this account, we must be careful not to confuse the two uses. In this book, when a

The two uses in this book.

real State is meant, the word will be capitalized and used as much as possible in the singular, when a "state" like Massachusetts is spoken of, no capital will be employed, and the plural will be used.

Distinction between the nation and the State.

Hinsdale, § 9.

Burgess, *Pol. Science*, I, 1–4.

Bluntschli, *ibid.*, 86–109.

Crane and Moses, *Politics*, chap. II

3. **The Nation.** — The word *nation* is frequently used as synonymous with State, but it really expresses a different idea. In a broad sense, a nation includes all of the people of any race. For example, the German nation in that sense includes not only the Germans living in the German empire, but all other Germans in the neighboring States. But nation is more commonly used in a limited sense. In that case, the nation is the body of people having a common origin and living under a single government within a definite territory. As used in a broad sense, the English nation would include all people of English blood anywhere on the globe, but as used in the narrower sense, we may have an American nation as well. What, then, is the difference between a modern State and the nation (using the word with limited meaning)? It is this. The State is a *political organization;* while the nation is a *body of people belonging to the same race*, with practically the same ideas and interests. The modern State, it is true, is an organization of the whole people of a territory for political purposes, but the people do not necessarily form a nation. The population of almost every country at the present time is made up of different race elements, and until these have been united, there can be no nation. But even after this occurs, we may not be able to speak with accuracy of the nationality of the people composing a State. So long as any locality or any section is more important to its inhabitants than the State as a whole, so long as local or sectional interests predominate in one part of a country, perfect nationality is lacking — the nation is yet in the process of formation. For this reason we can realize without difficulty that while modern States are usually nation states, the State has as a rule been developed earlier than the nation.

4. **Theories concerning the Origin of the State.** — Men

Three theories: of divine right, the contract, and the historical.

Hinsdale, §§ 12–16.

Wilson, *The State*, §§ 14–21.

have spent a great deal of time discussing the probable origin of the State, and in trying to find out how States are really formed now. They have usually accounted for it in one of three ways: —

(1) That the State is a divine creation, and that the sovereign rules by *divine right.*

(2) That when people became tired of living in a state of anarchy without government, they came together and made an agreement or *contract* to live with one another under such a government as seemed best to them.

(3) That there has never been a time when men have been without some kind of a government. That ages ago when a child was born, it came into a society already existing, that the government was not a human but a *natural* institution not greatly affected by the wishes of men. The second theory emphasized the artificial character of the State, the third the natural; the one stated that the intelligence of man was the determining factor in forming the State, the other that the State is the product of natural forces, of which man is one, and of natural conditions. These three theories have exerted considerable influence upon the history of States during the last three hundred years, and the truth of each, so far as they explain the character of States to-day rather than their origin, can be best shown by briefly stating their history.

The earliest modern theory.

Woolsey, *Pol. Science*, I, 196.

Bluntschli, *ibid.*, 286–292.

5. **The Theory of Divine Right.** — The theory that exerted the greatest influence at the beginning of the modern period was that monarchs ruled by divine right. It was really an outgrowth of the mediæval idea of the interdependence of the church and the State, and the sacredness of the office occupied by the head of each. It was used by its advocates to uphold the most absolute government of the monarch as late as the beginning of the eighteenth century.

Origin and practical failure of the contract theory.

6. **The Contract Theory.** — As ecclesiasticism began to lose its hold on the people, the supporters of absolute monarchy looked about for a firmer basis upon which to rest their doctrine. They found this in the idea of the *contract*,

claiming that when men became tired of living in a state of anarchy, they came together and formally entered into a contract with one another and with some powerful person as ruler to establish a government strong enough to protect them. These theorists were in time, however, hoist on their own petard. For about the middle of the eighteenth century there arose a school of writers of whom Rousseau was the leader, which reasoned that the originators of the contract had established not an absolute but a popular government, that later the rulers had seized powers not intrusted to them, and that the people had the right to rid themselves of the usurpers. This gave them a resting-place for the Archimedean lever which overthrew many established governments in the old world and the new during the latter part of the eighteenth century. When, however, they tried to put these principles into practice, difficulties were encountered. Instead of being able to establish such a government as men desired, they found themselves obliged to organize such a government as they could. The paper constitutions that France tried just before the opening of the nineteenth century proved the futility of making any other government than one based on the political experience of that State. The truth that lay in the contract theory was no more than this, — men may modify what already exists and change it so that it is better adapted to existing conditions.

Burgess, *ibid.*, I, 62.

Bluntschli, *ibid.*, 294–300.

Woolsey, *ibid.*, I, 190–195, 197.

Paignon in Lalor, III, 753–756.

7. Natural or Historical Theory. — The failure of the contract theory in practice led people to revise their ideas. It was seen that in all history societies and States have been formed not by the contract of their members, but by growth according to natural laws. That when these societies are formed, they have everywhere grown out of previous societies. That when a government is formed the character of that government is determined far more by the character of the previous governments of the State than by political theories. This is clearly seen in our own history. At the time our state and federal constitutions were made, it was found that only those parts of the government worked well

The theory defined,

Bluntschli, *ibid.*, 300–305,

and illustrated by American experience.

which were not very different from similar devices used in the colonies. The government adopted (in 1787–1789) by the United States was a federal instead of a confederate or national government, because neither a confederate nor national government was suited to the conditions; and either if tried must have failed. Confederate government had been outgrown by the people; but they were not ready for a purely national one. The political conditions prescribed the limits beyond which it was useless to go; *but within these limits political intelligence held full sway.*

Social obligations natural and inevitable.

8. **Natural Theory and Social Duties.** — A great many who favored the contract theory of the State believed that the society was largely a natural growth. It is needless to say that those who hold the natural theory of the State are much more inclined to look upon society as an organism. This tendency has been greatly strengthened during recent years by the vast increase of our knowledge concerning the processes of growth in plants and animals and the application of the laws discovered to societies and States. It has therefore become quite customary to consider the State an organism, subject to laws of growth and decay and composed of parts which cannot be separated from the organism without causing the death of both. While we must be careful not to carry the analogy too far, there is unquestionably a great deal of truth in it. For instance, it gives us a very different conception of the social duties of the members of the State from that we should obtain if we believed the State was formed by contract. The member is a part of society not because he wills it, but because he was born into it. He may choose within certain limits in what State he will live, but he must live in some State. If he separates himself from one State without becoming a member of another, the first State protects him wherever he goes, and to that State he is responsible for his conduct. But he cannot become a "stateless man." He may shirk and refuse to perform his social duties, but he cannot get away from his obligations to his fellows; and, if his refusal to perform those social duties

injures the society of which he is a member, the society, through the government of its State, will protect itself by punishing him.

Classified according to the location of sovereignty.

9. **The Kinds of States.** — Theoretically considered, the best classification of States is according to the location of the sovereign or supreme power of the State which compels everything else in the State to obey it. If sovereignty resides in a single individual, we call the State a *monarchy*. If a class of persons limited in number have the power to exact obedience to their wishes, it is an *aristocracy*. When the whole people organized to form the State are sovereign, it is a *democracy*.

Bluntschli, *ibid.*, 338–342.

Burgess, *ibid.*, I, 68–82.

Ancient and modern States.

10. **Historical Forms of States.** — History, however, furnishes us with a very different classification based upon no real principles. The earliest State produced in ancient times grew up with the city as its centre. The most perfect examples of the *City State* were furnished by Greece. In Rome the idea of the city State grew into the *World State*, but with the city at the centre. During mediæval times such States as existed were *Feudal States*, in which the territorial subdivisions were bound to the head of the State by feudal ties by no means strong. The last few centuries have witnessed the rise of *Nation States*. All of the members belong to practically the same race, and include most of the persons of that race. The unification of feudal States whose people belonged to any one race began in the fifteenth century with the nationalization of France and Spain, and has been practically completed in our own day by the consolidation of Italy and Germany. In certain cases, complete unification under an absolute central government was impossible. Then the old confederacy was replaced by a nation State of a peculiar form, called the Federal State.

Bluntschli, *ibid.*, Book IV, chaps. II–IV.

The location of sovereignty in each.

11. **Federal States and Confederacies.** — We must be careful to distinguish between Federal States and Confederacies. Both of these have a central government and local governments, each of which exercises certain powers of sovereignty; but there is a very great difference between them.

Wilson, *The State*, §§ 1372–1379.

Sidgwick, *Politics*, 512–516.

If we have a single sovereign which says what powers each government shall exercise, we have a *single State*, a Federal State, or, as the Germans say, a *Bundesstaat*. If, however, sovereignty rests not in the large territory but in the smaller territorial divisions, we have many sovereignties, therefore *many States*, or a confederacy, a *Staatenbund*. In other words, a confederacy is a union of States, and the central government is nothing more than the agent of those States, while in a Federal State there is a real central or united State, as well as a central government. In the same way we must be careful not to be confused when we have what is called a personal union — here we have one monarch for two countries, each with its own complete system of government. In that case we have two States, as, for instance, in England and Scotland between 1603 and 1707, or in the Austro-Hungarian monarchy to-day.

Definition and explanation.

Crane and Moses, *Politics*, chaps. XVII–XVIII.

Robinson in *A. A. A.*, III (1893), 785–808.

Sidgwick, *ibid.*, 507–512.

12. **The Federal State.** — It is not easy to define the Federal State so as to distinguish it from the ordinary centralized Nation State. It is not enough to say, as many authors do, that the sovereign delegates the exercise of certain powers to the central government and of certain other powers to the local governments. That is too vague. We can perhaps get a clearer idea from this explanation. In a Federal State there are two spheres of government: that left to the central government and that left to the local governments. The boundary between these spheres is fairly definite; and, by law and custom, fairly permanent; but it may be altered by the people of the whole State, who may also place certain sovereign powers outside either sphere of government. Until this boundary is changed, however, all matters within the sphere of the local governments are completely under the control of the people of the localities. In any case, the regulation of all matters of common concern belongs to the people of the whole State, who, by virtue of their power to alter the boundary between these two spheres of government (*i.e.* of changing the real constitution), are sovereign.

Democratic government under written constitutions.

13. **Characteristics of Modern States.** — Attention has already been called to the most marked characteristics of modern States, namely, that each State represents a nation organized for political purposes. In the organization we have usually not only a government but a constitution by which the State places limitations upon the government. Ordinarily, sovereignty rests with the people who rule through the exercise of popular influence and through the principle of representation. That is only another way of saying that modern States are usually democratic. This democracy has been of late growth, even in this country, and is very imperfectly developed, especially on the continent of Europe.

Wilson, *ibid.*, §§ 1398–1414.

Bluntschli, Book I, chaps. I–VI.

The citizen in ancient and modern States.

In no way does the State of to-day differ more from those of the past than in its relation to its members. In the ancient State only the privileged few were citizens, while a vast majority were not even in the position of subjects without citizenship — they were slaves. Yet the citizen was never more than a part of the machine. He lived for the State, which absorbed him and controlled him. It was only later that the citizen was really recognized to be an individual. In modern times the right of individuality as well as that of citizenship is admitted. The citizen is a part of the organism called the State. Under normal conditions, he cannot place himself out of relation to his fellow-citizens; but unless his right to life, liberty, and property interfere with similar rights in society at large, they are not denied to him. In other words, the modern society realizes that the interests of the individual and the State are not necessarily identical, but allows each free scope except where their interests clash, then the individual must yield.

Characteristics: supremacy and indivisibility.

14. **Sovereignty.** — We have already seen that sovereignty resides in the person or persons in the State who have the power to exact continued obedience from all other parts of the State. Its most important characteristics are: (1) It is supreme within the boundaries of the State; if not, it is inferior to some other power and that power is sovereign.

Hinsdale, § 11.

Burgess, *ibid.*, I, 53–56.

(2) It is "one and indivisible." There cannot be two supreme powers in one State. We may, however, find two parts of the State struggling for recognition as the sovereign, when it is practically impossible to determine for the time which is sovereign. If we accept such a solution for a large part of our early history, some difficulties disappear.

Powers of sovereignty.

The more important powers of sovereignty are: (1) making and altering the constitution of the State, which includes (*a*) determining the form and the real powers of the governments, and (*b*) determining the relation of the citizens to the government and to the State; and (2) delegating to the different governments in the State the powers dealing with internal and foreign affairs to be exercised by each. While it is expected that this delegation of powers is more or less permanent, it is always subject to change through the right of the sovereign to alter the constitution. It is thus seen that the sovereign is the real power of the State, that it is above the governments creating and controlling them, and that to it the governments are responsible. It may nevertheless be a part of one of the governments.

In law and in American history.

15. Disputes over Sovereignty. — The idea of sovereignty has been a cause of dispute since the term was first used. These disputes have unfortunately been both legal and political in their character, and great state questions have been fought out by the advocates of different schools. In our own history the question was the location of sovereignty in the people of the nation or the people of the States. As Professor Johnston well said, "The word people has been the political *x* of American history." The classical contention that sovereignty is unlimited, one and indivisible, has been assailed from many quarters. So high an authority as Professor Bluntschli denies that it is unlimited, and the fact that it is impossible to find a case in history where the sovereign power has been used entirely without limitations makes it advisable to substitute the word supreme for the word unlimited. That sovereignty is "one and indivisible" still meets the approval of the best writers, but some attempts have been made to prove the possibility of a dual sovereignty.

Cf. Lowell, *Essays on Govt.*, 189–222.

The constitution in general.

16. Written and Unwritten Constitutions. — Every civilized State has some kind of a fairly definite political organiza-

tion. The character of that organization, including the relation of the State to its subdivisions and its citizens, the form and powers of government, and the relation of the government to the citizens, may be embodied in law, in custom, or in both. In any case we may give the name *constitution* to those laws or customs that determine the character of the State. But it is customary to use the word in a much more limited sense, and to distinguish between written and unwritten constitutions. When there is a single fundamental law or set of laws that regulate either expressly or by implication the form and powers of the principal governments, the relation of the State to its subdivisions and the liberty of the citizens, we say that the State has a *written constitution*. Otherwise it is customary to speak of the constitution as *unwritten*. It will be readily seen, however, that no written constitution is likely to cover, even in the most general terms, all the subjects that belong to a constitution proper. In consequence, every State has an unwritten constitution whether it has a written one or not, although of course that unwritten constitution is not so important as it would have been had no written constitution existed.

Sidgwick, *Politics*, 540–543.

Distinction between written and unwritten.

We may compare the written constitution to the skeleton of an animal, which within certain limits determines what the animal shall be, though it does not tell us its color, the strength of its muscles, or much of its real efficiency. While the skeleton remains the same, the animals of that class must have many characteristics in common; but the degree of vitality the animal possesses, and the amount of work it can do, depends more on its individuality.

This relation of the written and unwritten constitutions to each other may perhaps be made clearer by reference to the United States. In the Constitution of 1787 and its amendments, the form and powers of the central government are given, limitations upon the powers of the states (commonwealths) are enumerated, and certain rights of citizens are placed beyond governmental interference. But this written constitution only by implication recognizes the

Relation of the unwritten Constitution of the United States to the written Constitution.

Cf. § 230.

existence of a Federal State, makes it possible for the State to be controlled either by the whole people or by one class, gives only the "paper powers" of the departments of the government and cannot create real power for them. All of these subjects and many others belong to our unwritten constitution, and are regulated either by statute law or by custom. For example, commonwealth laws have recognized the fact that the State and the government have become democratic; custom has made the presidential electors not men of independent judgment, but parts of the machinery of political parties. The changes in the unwritten constitution are much too numerous to be mentioned here, but the general character of the changes are given in chapters VI–IX.

Characteristics of a modern constitution.

If we were to give the most important characteristics of a modern constitution, the following would probably be named: it is made by the people; it gives the location of sovereignty; it regulates the relation of the State to its subdivisions and its citizens; it gives the form and the powers of the governments; it determines the rights of the citizens.

Its stability.

Sidgwick, *Politics*, 535–540.

17. **Advantages of a Written Constitution.** — If all States have unwritten constitutions, we may well ask, what is the advantage of having a written constitution in addition? As all States are changing, a written constitution helps to give definiteness and permanence to its political institutions. It leaves less to the government, which might otherwise alter the constitution for its own advantage and to the injury of the State. The written constitution is always a proof of the fact that sovereignty no longer resides in the government but in the people. The recent growth of the written constitution is undeniably due to the same conditions that have produced modern democracy. But while it protects democracy, it hinders the full application of democratic ideas in the government. In other words, the great advantage of the written constitution, *stability*, is unavoidably connected with the great disadvantage, *inflexi-*

bility. The attempt to remove this disadvantage by making the constitution easily alterable, as in France, practically destroys the real virtue of the written constitution. Yet it must be admitted that a written constitution of the most general kind that can be changed with comparative ease, and supplemented, as it always is, by an unwritten constitution that adapts itself to the needs of the time, is the best form for the ordinary State.

Simplicity of early government.

18. **Development of Government.** — In primitive political communities, the government was of the most rudimentary character. All of the things that needed attention were cared for either by a single person or by an assembly of the men. The former was something like a permanent government, because the ruler was a permanent official; but the latter could not be continually in session, and if they wished to have anything done, they usually called upon an individual who did what was asked and then again became an ordinary member of the community. Thus there was no permanent office. It was like the characterless amœba of which any part may be used at one time for gathering food and at another for locomotion.

Wilson, *ibid.*, §§ 1–29.

Separation into departments.

But it was the same with political institutions as it was with animal life. Development was from the simple to the complex, until in the highest forms, one organ performed a certain function and no other. As society advanced in civilization, the need of some permanent set of persons to keep order, to settle disputes and look after other matters, was more felt. Here we have the first real governmental organization, but with so little differentiation of duties that any one of these magistrates exercised judicial, executive, administrative, and legislative powers. Still further increase of duties made separation of these powers more or less necessary, as all could not be performed by one person. But until the eighteenth century the confusion of these departments was common, and the exercise of all the governmental powers by European monarchs was the rule. With the publication of Montesquieu's *Esprit des Lois* (1749)

and Blackstone's *Commentaries* (1770), an effort was begun to separate completely legislative, executive, and judicial functions. As progressive political societies believed this separation essential to good government and to the preservation of liberty, the attempt was made both in America and in Europe to put the principle into practice. The fact has been overlooked that with all organisms the increase of the number of organs has been accompanied by a corresponding dependence of each organ upon every other. Yet the application of this idea of separating the departments has undoubtedly given us the highest form of government yet produced.

Government the agent of the State, but both reflect political and social conditions.

Burgess, *Pol. Science*, I, 68.

Moses, *Democracy and Social Growth*, 19–22.

19. Government and the State. — It must be borne in mind that government is no more the State than the heart and lungs of an animal are the animal itself. The government is the chief set of organs of the State — the agent that carries out its will. But while the government is not the State, the character of the government depends very much on the character of the State. You cannot have the same kind of a government in Persia and America. A democratic government cannot be developed or maintained in any society where classes are distinctly separated from one another. Neither is an aristocratic government possible where all persons are on a level — possess social and material equality. But we can go further. The State and the government grow up together. Because the State is nothing more than a portion of society organized in a particular way, it is constantly changing. Those changes will naturally be reflected in the government. Any change that is made in its government which does not represent a change in the State will lead to one of two results. Either it will decay because it is useless; or, if it can produce a corresponding change in the State, it will survive. Yet we ought to realize that we can almost never produce a change in society by a mere change in the government. We can then see the uselessness if not the folly of altering the government without taking into account the social condition and the political

experience of the people; and we ought to appreciate the fact that a society changing as rapidly as ours in the United States is unlikely to have the same kind of a government in different periods of its national history.

Absolute and constitutional monarchies.

Bluntschli, *ibid.*, 431–439.

20. **Monarchies.** — Practically all the great States of to-day have either a monarchical or a republican form of government; but there is more real difference between certain absolute and constitutional monarchies than there is between a monarchy like Great Britain and a republic like France. The only thing necessary for a monarchical government is that its head shall be an hereditary sovereign; but if the powers of that sovereign are limited by either a written constitution, or by statutes and customs as binding as such a constitution, the government is really in the hands of the people's representatives. In the absence of such limitations, the monarchy is called absolute; for the power on the throne or behind it is not within popular control.

Pure and representative democracies.

Bluntschli, *ibid.*, 469–485.

Cf. Moses, *Democracy and Social Growth*, chap. I.

21. **Democratic Government.** — Of popular governments there are two forms, the *pure democracy*, and the representative democracy or the *republic*. In a pure democracy the assembly of the people does all the governing, and it is readily seen that only very small communities in which practical equality exists can ever have such a government. No such restrictions exist for a republic in which the people appoint representatives who compose the government. The republic is of course a much higher product of political evolution than the democracy proper, but it is necessarily less a government of the people and by the people. It does not require social or material equality of the people, though marked inequalities or classes are a continued source of danger. It does require a high standard of social character, a general diffusion of education, and a correct ideal of patriotism for its maintenance and development.

The relations of central and local government.

22. **Centralized and Dual Governments.** — Governments may be differently classified according to the concentration of all governing powers in one body or their separation between two governments. When the localities are entirely

Burgess, *Pol. Science*, II, 4–7.

subordinated to the national government, the government of its State is said to be *centralized*. If, however, the localities have a sphere of activity of their own as in confederacies or Federal States, the term *dual* government is used. The tendency since feudal times has been to make the central government more and more powerful, as the State itself became more centralized. Just as the centripetal or integrating forces of the State have triumphed over the centrifugal or disintegrating forces, so the central government has tended to absorb the local governments. Whether the effort made in the Federal State to maintain a balance between the national and the commonwealth governments will prove to be futile, history will decide. If with the powerful aid given by the strong local spirit in America and a constitution of extreme rigidity, the United States cannot hold in check the forces of centralization, we may well come to the conclusion that Federalism is after all but a transitory phase in the development of centralized States with powerful central governments.

The relations of executive and legislative.

Burgess, *ibid.*, II, 11–16.

23. **Parliamentary and Presidential Governments.** — National governments whether centralized or not, either in republics or monarchies, may be parliamentary or presidential. Where the departments are separated as much as possible so that the executive and the legislative branches are very little dependent upon each other, as in the United States, we have the *presidential* form. But if emphasis is laid upon the interrelation of these two departments, upon the fact that they work together, the executive being a part of the legislature, the real controlling part, yet always the agent of the legislature, as in Great Britain, the government is *parliamentary*. The former is the outgrowth of the idea of "checks and balances" prominent among political scientists at the time when popular government was in its infancy, and the protection of the individual from the tyranny of the government occupied a more prominent place in the thoughts of men than the efforts to make government efficient. The theory upon which it seems to be built is

that too much government is a worse evil than too little — a theory which contains a large element of truth in a modern democracy as well as in an absolute monarchy.

Proper functions of the legislature.

Burgess, *ibid.*, II, 106-130.

Sidgwick, *Politics*, 324–332.

24. **The Legislative Department.** — Whatever may be the relation of the different departments, at the present time all modern States recognize the need of having legislative, executive, and judicial departments. It is difficult to define the exact functions that ought to be performed by each; but a few general statements may be of value. The conduct of political societies is governed by certain rules which the bulk of the society think necessary to its existence and proper for its development. These rules were at first purely in the form of customs; but, as society became more complex, they were committed to writing. Until within two hundred years these rules were not numerous, but the government was able to use its power arbitrarily in enforcing them. More recently the attempt on the part of the people to restrict this arbitrary power has led them to place in the hands of their representatives the power to alter these laws and make new ones. This has led the legislative departments to enact a great many laws, most of them dealing with special objects, for the purpose of reconstructing society and of carrying out certain plans; whereas the true duty of the legislative department is rather to lay down general rules for governing the conduct of society and to refrain from laying down such rules unless the actual needs of the society at the time require that they be embodied in the form of statutes.

Applies the law to special cases.

Sidgwick, *Politics*, 321-324.

Burgess, *ibid.*, II, 307-319.

25. **The Executive Department.** — If, then, the function of the legislative department is to see that the right laws are made, and at the right time, the proper function of the executive department is to apply these laws to any special cases that come up. If an individual ignores a law, the executive must see to it that the individual obeys the law, or is punished. If a law is made that the revenue of the State shall be derived from taxes or certain imports, it is the duty of the executive to assess those goods and collect the tax. To administer the laws in a State as complex as

ours means that an infinite variety of details connected with a vast number of important subjects must be attended to. And just here is the real danger that the individual will suffer restriction of his rights unless the executive, which must be strong to be efficient, is not properly controlled.

Adjusts differences in cases affected by the law.

Burgess, *ibid.*, II, 356–366.

26. The Judicial Department. — If one individual interprets a law in one way, and another individual interprets the same law differently, so that the acts of the two individuals bring them into conflict, it is necessary that there should be a department of the government to give an authoritative and final interpretation of the law which the executive shall make all obey. Since as much depends upon the interpretation of laws as upon the laws themselves, the judicial department is in a real sense a law-making body.

The individualistic and the socialistic theories.

McKechnie, *State and the Individual*, 171–269.

27. Theories concerning the Office of Government. — It has always been and always will be a mooted question as to what interests of the society should be under the care of the State through the government. People might be divided into two classes according to their views on the subject, the individualistic and the socialistic. The individualist believes the government should do just as little as possible for the society, and should not interfere with the individual except in cases of necessity. The extremist goes so far as to say that if the government protects the citizen from his neighbors and his enemies, it has done its full duty. The socialistic school claims the needs of all are above the rights of the individual, and that the government should do everything in its power not only to protect but to develop the society. The extreme socialist interprets this to mean that land should be held for the benefit of all, that the government should operate the telegraph and the railway lines, and in many cases favors the governmental control of all *capital*. The communist goes a step further and asks that the government hold all property, capital included, for the common benefit. Very few people hold any of these extreme views. The vast majority are much more moderate. We may class those who think the government is already doing

more than it ought as individualists, while those who believe the sphere of government ought to be enlarged belong to the socialistic school.

Two classes: constituent and ministrant.

28. **Functions of Government.** — It is not easy to determine where the line should be drawn, as the limits of governmental action depend so much on changing conditions and on the amount of governmental action to which a particular State is accustomed. Wilson, in his book on *The State*, divides the functions of government into two groups (§§ 1478–1480) : I. Constituent, and II. Ministrant.

"**I. The Constituent Functions:**

(1) The keeping of order and providing for the protection of persons and property from violence and robbery.

(2) The fixing of the legal relations between man and wife and between parents and children.

(3) The regulation of the holding, transmission, and interchange of property, and the determination of its liabilities for debt or for crime.

(4) The determination of contract rights between individuals.

(5) The definition and punishment of crime.

(6) The administration of justice in civil causes.

(7) The determination of the political duties, privileges, and relations of citizens.

(8) Dealings of the state with foreign powers: the preservation of the state from external danger or encroachment and the advancement of its international interests."

Wilson, *The State*, §§ 1504–1512

Wanbaugh, in *At. Mo.*, LXXXI (1898), 120-130.

"**II. The Ministrant Functions.** — It is hardly possible to give a complete list of those functions which I have called Ministrant, so various are they under different systems of government. The following partial list will suffice, however, for the purpose of the present discussion:

(1) The regulation of trade and industry. Under this head I would include the coinage of money and the establishment of standard weights and measures, laws against forestalling and engrossing, the licensing of trades, etc., as well as the great matters of tariffs, navigation laws, and the like.

(2) The regulation of labor.

(3) The maintenance of thoroughfares, — including state management of railways and that great group of undertakings which we embrace within the comprehensive term 'Internal Improvements.'

(4) The maintenance of postal and telegraph systems, which is very similar in principle to (3).

(5) The manufacture and distribution of gas, the maintenance of water-works, etc.

(6) Sanitation, including the regulation of trades for sanitary purposes.

(7) Education.

(8) Care of the poor and incapable.

(9) Care and cultivation of forests and like matters, such as the stocking of rivers with fish.

(10) Sumptuary laws, such as 'prohibition' laws, for example."

"These are all functions which, in one shape or another, all governments alike have undertaken. Changed conceptions of the nature and duty of the state have arisen, issuing from changed historical conditions, deeply altered historical circumstance; and part of the change which has thus affected the idea of the state has been a change in the method and extent of the exercise of governmental functions; but changed conceptions have left the functions of government *in kind* the same. Diversities of conception are very much more marked than diversities of practice."

Sphere of State action must be enlarged slowly.

Willoughby, *Amer. Citizenship*, 53–62.

Wilson, *The State*, §§ 1521–1535.

29. Limits of State Interference. — It is not possible to lay down any set rules according to which a State shall decide whether it ought to perform any particular "ministrant" function. The wisdom of such an action must depend on the history and the present needs of the State, upon the extent of the functions already exercised, and the efficiency of the governmental machinery. Yet we can readily see that as a society becomes complex, the government must control and regulate many more actions of the citizens in order to fully protect them. For example, no one doubts the right of the government to pass and enforce all proper measures for the health of the community. This may lead in crowded cities to regulations for individual householders that are very obnoxious. Dealers may have to submit to inspection of goods which might injure members of the community, and

factories are continually under supervision to see that the health of the operatives is in nowise endangered. Too little regulation is, like too much, a mark of poor government. The State must see that there is just enough, and that it is never arbitrarily applied. Yet it will be better for a State to leave something undone than at one stroke to alter its policy and undertake important duties for which it has no proper training. It will not pay a State to perform functions which may seem necessary, but which can be performed only at a great loss of individual freedom.

From custom to statute and constitutional law.

Wilson, *The State*, §§ 1416–1443.

30. **Growth of Law.** — As has already been stated, in early times governments were much less complex than at present, and we cannot separate them into three or four departments. The same person or body made the laws, saw that they were observed, and told what they meant. But the community was so small that it was not necessary to make many laws, and as a matter of fact the law-making body contented itself with declaring what was law; in other words, what the *custom* was in that community. So all early laws were little more than an embodiment of the customs that were observed. As the community developed, separate rulers or magistrates were appointed to apply the law. As the law was not often written down, the magistrate was inclined to depend as much on his own judgment as on the law. This led to great abuses, the abuses led to protests, and the protests to a written law. To this written law were added in time the laws or statutes passed by the law-making body. If the law-making body was restricted by some great laws that were recognized as being at the very foundation of the State, these great laws were called *constitutional.*

Conditions under which law becomes most favorable to liberty.

Burgess, *Pol. Science*, I, 174–183.

31. **Law, Government, and Liberty.** — We often get the idea that law and liberty (civil liberty), or government and liberty, are contradictory terms, so that the more law or the more government we have the less liberty there must be. Is this idea correct? If we were to mean by liberty that each man had a right to do what is right in his own eyes, we see that law interferes with liberty. But for each man or any man

to do as he pleases is not liberty, since if one man were to do that, the liberties and the rights of others would necessarily be restricted. Liberty cannot exist then unless there is law to control those who would infringe upon the rights of others. But if too little law means anarchy and not liberty, how shall we determine how much law and what kind of law is needed, so that there shall be as much liberty as possible. In the first place, both the amount and the kind of law must depend on the condition of the society for which it is made. In our complex civilization, we need a much larger number and very different laws from those required by a primitive agricultural community. But in each case it is *the greatest good of the greatest number* that will on the whole give the fullest liberty. This means, of course, that the liberty of the individual may be sacrificed to the common good, and that social liberty is above individual liberty.

Human law must conform to natural law.

In the second place, in order to secure the greatest good of the greatest number, the law must conform not only to the condition of the society as it then exists, but should be in conformity with natural law. Any statute or constitutional law that is artificial, that runs counter to the political, economic, or social laws according to which the universe is governed, will not only restrict liberty, but will injure the society and must in time give place to a truer law. It is true in political science, as in everything else, that the nation is free not when it tries to escape the operation of law (for that it cannot do), but when it understands the universal laws of nature and acts in accordance with those laws. The nation that tries to make itself rich by making its neighbors poor, as many attempted on a grand scale two or three centuries ago, is like the man who tried to lift himself by his bootstraps. If a nation, through law, tries to retain a system of society and government that the State has outgrown, revolution will overthrow the existing order of society. If it clings to a false economy which is a survival of past ages, the "law higher than the Constitution" will surely assert itself.

32. Kinds of Law. — The two most prominent subdivisions of law are into *public* and *private* law. The former deals with all laws regulating the actions of States or their governments either in relation to each other or to individuals; the latter treats of the relation of one individual with another. An important branch of public law is *international* law, which is not made by any legislature but is merely the set of customs recognized among civilized nations as suitable for governing their relations with one another. *Constitutional* and *administrative* law are also parts of the public law. One deals with the principles of government, the other with details. *Criminal* law really belongs to public law as it defines crimes against the State and makes provision for the punishment of persons violating the law, but it is not usually separated from other parts of public law.

Divisions of public and private law.

Wilson, *The State*, §§ 1216–1226.

Willoughby, *Amer. Citizenship*, chaps. IV, VII.

Private law covers a multitude of subjects more or less connected with our everyday affairs. It regulates the holding and disposal of land and other property, the relation of parent to child, and of employer to employee. It deals with the laws of marriage and divorce, of all kinds of contracts, of bequest and inheritance. If an individual buys or sells anything, makes a written agreement with any one for a particular purpose, or seeks a legal remedy for an injury done, he does it in accordance with the private law of the State.

33. The Kinds of Liberty. — We should distinguish different kinds of liberty. When we use the word we ordinarily refer to *civil liberty*, freedom from arbitrary personal restraint and the right to enjoy life and the use of property. *Political liberty* necessarily deals with the part played in the government of the community. *Religious liberty* is found where any sect has the right to worship in its own way. We find *industrial liberty* where the worker does not have his place of residence and occupation picked out for him. There is no necessary connection between political and the other kinds of liberty. We naturally expect a greater degree of all kinds in a society that is self-governing, but

Four kinds of liberty.

liberty is rather an evolution of civilization than a product of democracy. If we compare Anglo-Saxon England with Rome or with any modern State, we shall find that while there may have been more political freedom, there was less of almost all other kinds.

Some ideals of equality.

McKechnie, *The State and the Individual*, chap. XXIII.

34. Kinds of Equality. — It has been one of our favorite maxims that "all men are created equal," but in what respects individuals are equal does not readily appear. Certainly in personal qualities the greatest difference exists. Theoretically, *all are equal before the law*. As far as possible, all have *equal opportunities*. For centuries we have been drifting toward *social equality*, but only among whites. The ideal of democracy has been *political equality*, but with few exceptions the equality has not crossed sex lines. If equality is a goal we attempt to reach, humanity seems foredoomed to disappointment. Liberty and equality cannot live together. Given the same chance and perfect freedom of action ten men that start together will invariably be found in a short time to have drifted apart. We cannot make men equal except by bringing all to the level of the lowest.

The character of a society is expressed in its institutions.

Cf. Moses, *Dem. and Social Growth*, chap. I.

35. Society and its Institutions. — As society has developed, there has gradually been evolved not only a social system and a government, but religious and business organizations which have in time become more or less fixed and to which the general name *institutions* may be given. All of these are but outward evidences of the forces at work in the society. Taken together, they are less than society, yet they offer the best means for studying it, as they are tangible and more real. But these institutions do more than show the character of the society, they tend to keep the society in the same stage that it was when the institutions were produced. This is especially true of the more complex institutions, which do not readily change with the natural and necessary changes in society.

Both are forms of growth.

36. Evolution and Revolution. — Nothing can prevent changes in any society. Growth is one of the laws of its being. This may be more or less rapid, but it is constant;

in other words, *social evolution* is taking place all the time. In a narrower sense we sometimes speak of social evolution only when the change in society itself has produced a change in the social institutions, *i.e.* in the relation of classes to each other, or of the members to one another. When this social evolution leads to an altered form of the State which is adapted to the new society, and to suitable changes in the government and in the law of the State, we call the change *political evolution*. But if the real growth of the society leads to none of these changes in the relation of the classes to each other, to no change in the government or the laws, a time will come when the new society will demand that the old institutions be cast aside and new ones substituted. If for any reason this change is refused, or if the old institutions cannot be adapted to the new society, the new society asserts itself, abolishes the institutions it has outgrown, with perhaps much that was valuable in its past experience; and, often after terrible suffering and bloodshed, establishes a new order of society, a new form of government, and a new set of laws suited to its present conditions. Such a change is called *revolution*. Both evolution and revolution are forms of growth, for *a partial evolution always precedes revolution*. But revolution is wasteful. It often fails to establish the kind of government and the order of society the new State really needs; and the next few years are frequently spent in adapting the new forms to the conditions of the new State.

An example of an institution once useful, later a curse.

37. **Slavery.** — The history of slavery shows how an institution may at one time be a means of developing a society, when at a later period it hinders progress. Slavery was a distinct advance, both from an economic and from a humanitarian standpoint, upon the older custom of putting to death captives in war. It made the first real States possible because it produced a class that performed those duties most necessary to keep people alive, while it left the conquering race free to devote its energies to the problems of war and government.

In the middle age of civilization, the harsher forms of servitude disappear, and the general system of land tenure

upon which society rested substituted for slavery a kind of land serfdom or villeinage. But in all tropical countries slavery continued to exist, and was looked upon as beneficial to the lower as well as the higher classes, since it raised the former from a condition of barbarism. Feudalism was not transplanted to America, but the semi-tropical conditions of the Southern colonies led to the development of the system of African slavery. There is no doubt that this form of servitude was almost universally considered beneficial to the negro, to whom a real service was rendered by placing him under christianizing and civilizing influences. There is no more doubt that the economic and political development of the South during the colonial period was greatly aided by slavery. But it produced social classes, it was adapted only to the ruder forms of industry — in brief, it could not adapt itself to the new social conditions of which the American and French revolutions were not only evidences, but productive forces. Like feudal serfdom, American slavery stood in the path of progress, sought to check that progress, and was destroyed in the attempt.

38. **Mortality of States.** — No lesson of historical development stands out in greater prominence than this, — no State has been or is likely to become immortal. Like all organisms, States show a period of early vigor and strength, during which they are assuming a definite form; a second period when all of their forces are well under control and used to the best advantage; and a final period of decay when their vitality no longer suffices to withstand the attacks of internal and external foes. These periods vary greatly in length with different States. The first may be as brief as that of the Arabian empire in the Middle Ages, or Spain at the beginning of the modern period, or it may be as long as that of Russia. All of the periods may be as long as those of Rome, each of which covered centuries. We seek to learn why these States fail, and then draw comparisons between them and ourselves, forgetting that their social system and political organization was probably as well adapted to their needs as ours are to solve the much more difficult problems that confront us. We are barely out of the first period of our development and may reasonably look forward to a long and promising career of national success; yet there is every reason to believe that the second period must give place to the third.

39. Some Tendencies of Modern Development. — The civilized world has witnessed many changes the last century or two. Society is being reconstructed on a non-feudal basis whose fundamental doctrine is equality. Democracy represents the political and to some extent the social side of that reconstruction; but we have seen that democracy is still in its infancy over most of the globe. The democracy has transformed governments and has fostered new humanitarian ideas, but it has not been able to check forces like centralization, colonization, and militarism. Political democracy.

Economically, civilized society has advanced from the agricultural to the industrial stage. While modern industry has helped to produce free labor, it is not favorable to economic equality. It demands great concentration of capital for the maximum of production with the minimum of effort, but it has failed to distribute the results of that production according to modern ideas of justice. Economic consolidation.

Another phase of modern development is the growth of nation states. Nationalities are becoming self-conscious, and in case they have no common political organization, have everywhere sought to form States that would express that nationality. The success of the latest products of this movement — Germany and Italy — seems assured; but farther east, especially in Austria and the Balkan states, there are national problems that will test the skill of Europe. Nation states.

Many as are the problems yet unsettled, the difficulties that seem insoluble, history tells us that our present civilization is its highest product. The path of development may be as tortuous as the course of the lower Mississippi, but humanity is coming nearer and nearer its goal. The apparent turns backward may prove, as did the French Revolution, a means of finding a new and better outlet to the sea of a more perfect civilization. The changes represent progress.

QUESTIONS AND REFERENCES

The State (§§ 1–13)

a. Cf. the definitions of the state; nation and folk in Burgess, Woolsey, Crane and Moses, and in Bluntschli. Use indexes.

b. On the origin of and nature of the state consult Smith, chap. I; Bluntschli, Book I, chap. VII, and Book II, chaps. VI–X; Woolsey, I, pp. 189–198; Burgess, I, pp. 59–67.

1. Make complete definitions of all important terms used in the chapter and apply each to different countries at the present time.

2. Show how nations have tended to develop separate national governments during modern times.

3. What is the difference between the English nation and the English State? Is there an Irish nation? An Irish State? Did the nation or the State reach a comparatively completed stage first in France? In Spain? In England?

4. Mention instances where contract has been used in forming governments. Were the governments based solely on contract?

5. To what extent was the government formed by the Constitution of 1787 original? To what extent did it copy previous State constitutions (consult Johnston, *New Princeton Review*, 1887)? To what extent was it a copy of the British constitution (cf. §§ 136–138)?

6. In what way is democracy now different from democracy in ancient times (Bluntschli)?

7. What is the difference between a voter and a citizen?

Sovereignty and Constitutions (§§ 14–17)

a. On the nature of sovereignty compare Crane and Moses, chap. III, Bluntschli, Book VII, and in Lalor, Book III, pp. 763–766; Smith in his introduction; and Lowell, *Essays on Government*, pp. 189–222. On the development of the idea of sovereignty see Pollock (index).

b. On constitutions consult Tiedeman, *Unwritten Constitution of the United States*, and Cooley, *Comparative Merits of Written and Prescriptive Constitutions*.

1. Apply your definition of sovereignty to the British Parliament, the German emperor, the French nation, the state of Massachusetts. In what respects may each be said to be sovereign?

2. Can you find any instances of "dual sovereignty" in history? Show why there is no dual sovereignty in the United States at the present time.

3. What is the method of changing the constitution in France, in England, and in the United States? What does the mode of amendment indicate as to the location of sovereignty (cf. Wilson, *The State* (index), Borgeaud, *Adoption and Amendment of Constitutions*)?

4. What is the connection between democracy and the written constitution?

Government (§§ 18–26)

1. Classify the important governments of the present under the different heads mentioned. Consult Burgess, II, pp. 1–16.

2. What is the highest form of government? Does history show that aristocracy is a higher form than monarchy? Quote instances.

3. What advantages would we derive from making the United States government more centralized (cf. chap. X)?

4. What is meant by administrative duties (see Goodnow)?

Sphere of State Activity (§§ 27–29)

a. Consult Willoughby, *Citizenship*, chap. V; Spencer's *Social Statics*, pp. 109–136, and *Man* v. *The State;* Leroy-Beaulieu, *Modern State*, pp. 155–215; Ritchie, *Limits of State Interference.*

b. On theories, see McKechnie: Socialistic, 171–212; Individualistic, 213–260; Organic, 264–269.

1. Which ones of the ministrant functions are now used by the governments of the United States?

2. State the advantages and disadvantages of state ownership of railways (Hadley, *Railroad Transportation*).

3. Select eight things that the government (State or national) is doing for society, and six that have been proposed. Of the six, how many do you favor? Of the eight, how many were not undertaken fifty years ago?

4. State the chief objections to increasing the sphere of State activity (Willoughby, *Citizenship*).

Law, Liberty, and Equality (§§ 30–34)

1. What is law?

2. If political liberty does not necessarily produce other kinds of liberty, will government by democracy be permanent?

3. Why cannot liberty and equality live together?

Processes of Political Growth (§§ 35–39)

1. What State forms the best example of continuous political evolution? What political revolutions have occurred during its history? What social revolutions?

2. What revolutions have occurred in the United States? What is the difference between the American Revolution of 1776, the French Revolution of 1789, and the European Revolutions of 1848?

3. Show how different institutions have at one stage of history represented the best and most progressive ideas of the time, and have been productive of the greatest good; while later they have sought to block the wheels of progress in order to maintain their powers. Consider, *e.g.* the feudal system, the church of the Middle Ages, the House of Lords, confederate forms of government, the absolute power of French kings, etc.

4. Trace the powers of the English crown from 1066 to the present, showing how it has been modified by evolution and revolution.

PART I

HISTORICAL DEVELOPMENT

CHAPTER II

DEVELOPMENT ON ENGLISH SOIL

General References

Freeman, *Development of the English Constitution.* Emphasizes the continuity of English development.

Montague, *Elements of English Constitutional History.* A very good elementary account.

Fielden, *Short Constitutional History of England.* Historical discussion of different topics.

Boutmy, *English Constitution.* Suggestive.

Macy, *English Constitution.* Descriptive and Historical. Especially good on modern period.

Gneist, *English Constitution.* 2 volumes.

Taylor, *Origin and Growth of the English Constitution.* 2 volumes.

Medley, *English Constitutional History.* Not a continuous history. Invaluable for reference.

Taswell Langmead, *English Constitutional History.*

Stubbs, *Constitutional History of England.* 3 volumes. Still the recognized authority on the Middle Ages.

40. Liberty and Government in Saxon England. — When the Angles and Saxons overran Britain in the fifth and sixth centuries, they brought with them the Teutonic institutions that had been in use on the continent for many years.

Town mote, hundred mote, and shire mote established.

As soon as one of these roving bands settled down to an agricultural life, all the warriors came together to parcel out a portion of the land and decide other matters of common interest. These town motes or assemblies in which each

Montague, *Eng. Constitutional History*, 7–14.

Wilson, *The State*, §§ 833–838.

Taylor, *Eng. Constitution*, I, 10–14.

Howard, *Local Constitutional Hist. in U. S.*, 18–23, 264–269, 298–309.

man had a voice became a permanent institution; but when several towns (which were merely settled portions of territory) united to form what was called a hundred, it was found difficult to get all the men together in a single assembly. The matter was finally settled by choosing a reeve or head man and four "discreet men" from each town to meet at intervals. This solution of the difficulty by the principle of *representation* of the smaller in the larger unit marks an essential difference between ancient and modern government. When hundreds united to make shires, the same method was adopted; but when the shires were united into kingdoms, and finally in the consolidation of the heptarchy under Egbert (828), the idea of representation seems to have been largely lost sight of. It is true there was in theory an assembly of all the freemen of the realm, possessing the nominal right of electing and deposing the king; but it was manifestly impossible for many to attend, and it soon became a very small body called, from the select character of its members, the Witan or Witagemote. But in the local divisions there continued, essentially unmodified, the two great principles of political liberty and representation.

No national assembly of the people.

Advantage of the insular position.

41. The Essential Factors in English Constitutional Development. — With such auspicious beginnings, England might well seem destined to be the home of a self-governing people. Yet this would not have been the case but for the existence of three conditions or forces which did not exist upon the continent. The first was its insular position. The isolation which this caused had been responsible for the slight hold that the Romans had obtained on Britain, and largely for the thoroughness with which the Teutonic invasion had been completed. On this account Teutonic institutions had been developed in all their purity, the old independent spirit had survived, and feudalism had made but slight progress before the time of the Conqueror.

A semi-national feudal system.

The second of these conditions was the peculiar system of feudalism introduced by William of Normandy. Every noble or freeman in the realm was obliged to swear allegiance

to the King as his suzerain, and to place his obligations to the monarch above those to his immediate overlord. This greatly strengthened the power of the Crown, and left the King master of the situation in England, while on the continent kingly power remained undeveloped till long after the Crusades. However, this power of the King would have been an injury rather than a benefit but for the existence of the third factor peculiarly English, — the strong and independent character of the people. Upon the original Anglo-Saxon stock, with its love of liberty, its sturdiness but its unconquerable stolidity, had been engrafted new elements in the Dane and the Gallicized Norman. These elements, especially the Norman, were not easily assimilated ; but the friction between the races was no less valuable than their later union in the development of the national character.

The independent character of the people.

It would be unjust not to mention the great service performed by the Church during both the Saxon and the Norman periods as the great unifying power of the realm. Without it there would have been no common bond between the kingdoms consolidated by Egbert, and, but for its guiding and directing influence, the Saxon and the Norman must have remained apart much longer than was the case.

42. The Norman Rule: General Characteristics. — The coming of the Normans necessarily altered to some extent the condition of affairs under the Saxons. The change would have been much more radical but for William's desire to appear to be what he claimed, — the lawful successor of Edward the Confessor. The Witan was continued as the King's Council, although the real power was gradually transferred to a committee of a few powerful nobles and churchmen. The centralizing Norman influence made itself felt not only in the altered form taken by feudalism, but through the royal appointment of the chief officials of the shire and the gradual displacement of the shire mote, which was little more than a court, by the King's judges. In the local divisions the political power still remained with the freemen, but the Church made itself felt by transforming the town into

Centralization.

Macy, *Eng Const.*, 117-132.

Ecclesiasticism in local affairs.

a parish; yet while the whole local system acquired a tinge of ecclesiasticism and so came more under the control of the King, it was not greatly altered. Many of the towns had purchased exemption from baronial rule and had been granted charters, which freed them from taxation upon payment of a stipulated sum, and left the suffrage in the hands of the leading guilds of the place.

Absolutism produces Magna Charta and a Parliament.

Macy, *Eng. Const.*, 158–179.

43. Contest between Crown and Nobility: Thirteenth Century. — Probably the most marked characteristic of the Norman and Angevin periods is the long contest between the Crown and the nobility. This struggle had very great influence upon the constitutional and institutional development of England, for out of it grew the Parliament and the recognition of many rights and privileges not existing on the continent. At the first the Crown was so powerful that it easily maintained its position without consulting the rest of the realm. Under John, the tyranny became so oppressive that nobles, clergy, and people made common cause against the growing power of the King. Their victory was so overwhelming that practically all their demands were granted in the Great Charter (1215), which guaranteed to each citizen the writ of *habeas corpus*, right of trial by his peers, and taxation only by consent of the council. Thus at one stroke the already threatening power of the King was checked, the nobles and commons were brought closer together, and liberty of the whole people seemed to be assured. But the twenty-five nobles who were to see that the charter was observed found the task too difficult for them, and the attempted restraint of the Crown was continued by warfare rather than by constitutional means. In the contest, each side was anxious to get the help of the people, and consequently offered rewards for their support. This explains why in 1265 Simon de Montfort attempted to strengthen his position by including in the national assembly which he called two knights from each shire and two burgesses from each town favorable to him. Not to be outwitted by the nobles, the Crown adopted the same methods,

More liberty given as a reward for the help of the people.

so that after 1295, when a Parliament was called, it was customary to summon the four estates of nobles, clergy, knights, and burgesses.

A Parliament of but two houses.

Medley, *Eng. Const'l Hist.*, 293–301.

44. **Fourteenth to Sixteenth Centuries.** — During the first half of the fourteenth century a change occurred in Parliament which gave it much greater strength. Two of the four estates — the nobles and clergy — united to form one house; while the other two always acted together in what was later called the House of Commons. As the Commons represented the people, both the Crown and the Lords were anxious to secure their aid in the contest with each other. In consequence it soon became a recognized right of the Commons to vote supplies. Judicious use of this power brought them others, for they refused to vote taxes for the King till abuses were removed or privileges granted. But just when it seemed as though the King's powers would finally be restricted by the constitution, three causes led to increased despotism. The nobility, which had born the brunt of the battle in the contest with the King, was almost destroyed by the War of the Roses; the restriction of the suffrage to comparatively large property holders tended to weaken the Commons at the same time; and the large class of yeomen, who had been the bulwark of Britain in the long war with France, had begun to degenerate into a class but little better than peasants, and had weakened the whole nation. But while the Tudors taught Parliament the lesson of servile obedience to the King, they increased its nominal power, and those very monarchs, by their independent religious attitude, set an example of political independence which the great Puritanic element of the nation was not slow to follow. The Renaissance had grown into the Reformation, and in England the Reformation meant liberty.

The Commons gains the right to vote supplies.

The Tudor kings supreme.

45. **England at the Close of the Tudor Period: Central Government.** — The Central Government in 1600 consisted of the Crown, the Privy Council, the Parliament, and the Judiciary. There was no such separation into three departments as we have now in this country. The Crown was, to

Predominance of the Crown.

Macy, *Eng. Const.*, 247–260.

Medley, *Eng. Const'l Hist.*, 78–79, 301.

all practical purposes, the government, but in the matter of legislation the Crown and the Parliament acted together; that is, there were the three houses of King, Lords, and Commons, any one of which had an absolute veto over the others. Even in legislation the King was the most powerful house, as he possessed the real initiative in all important matters. The Lords and the Commons each had powers of their own, the latter dealing chiefly with finance. But the Crown could further increase its influence in legislation by proroguing Parliament, and even by altering its composition. It could create peers at will, and might change not only the boroughs that sent representatives, but the franchise in those boroughs. Still another power akin to legislation was in the possession of the King. He could issue through the Privy Council proclamations which had the force of law. As the Council was chosen by him and directly responsible to him, this power was almost without limitations. As executive, he was little restricted. He was commander-in-chief, had absolute control of all foreign affairs, and possessed great power in appointment. He selected all judges, to hold office during good behavior, which meant the pleasure of the monarch, and so it came about that the judiciary were but tools of the King, who was the "fountain of justice."

Important influence of the local gov't upon America.

Local gov't as a whole.

Goodnow, *Comp. Const'l Law*, I, 162–164.

Channing, *Town and County Gov't in the Colonies*, in *J. H. U. S.*, II, 439–453.

46. **Local Government in 1603.** — In many ways these central institutions were destined to exert a less direct influence upon America than the local institutions of England. It was a long time after the first settlements were made before a real central government was established in America; while even the governments of the colonies were developed so slowly that the influence of the Parliament and the Crown was either purely general or made itself felt through their relation to the colonies and consequent influence on the development of American nationality (§§ 83–88).

A centralized county gov't.

Fiske, *Civil Gov't of U. S.*, 50–53.

The local governments were of three kinds, those of the counties, the parishes, and the boroughs. The *county* government was quite centralized, as all the important officials were appointed by the Crown. The chief officials were the

justices of the peace, who held court in place of the old shire court, and looked after the administration of justice, the highways, etc. They were assisted by the sheriff and the lord lieutenant. In the *parishes* the vestry looked after most secular and ecclesiastical matters. The vestry usually numbered twelve, and they were either chosen by the ratepayers of the parish or elected by the former vestry in case of a vacancy, that is, they formed a close corporation. In most of the parishes the ratepayers chose other persons, such as the constable and the church-wardens, who were overseers of the poor. When money was to be raised, the amount and the manner of raising it was often decided by the ratepayers. It can thus be seen that all over England the people of the rural districts were accustomed to a system of local government in which they took no small part. The *boroughs* were governed in one of three ways, — the officials being elected by just a few persons who occupied political positions, by a large number connected with the guilds, or by the taxpayers at large. The government was not of so popular a character as in the country, but even in the towns there was considerable opportunity to gain political experience. It is not easy to realize that so great a degree of self-government existed under the Tudors, but it can be easily seen how great an advantage was derived by the more progressive classes from this political experience.

Medley, *Eng. Const'l Hist.*, 392–400.

The Parish.

Fiske, *ibid.*, 36–39.

Medley, *ibid.*, 400–404.

Borough government.

47. The Rights of Englishmen (1600). — Just as the local governments of England furnished the models for the colonists, so the civil, political, and religious liberty enjoyed or denied in the England of the seventeenth century was the basis of the new society which sprang out of the old under conditions much more favorable to the development of rights. From the times of *Magna Charta* every freeman had been nominally entitled to a speedy trial before a jury of his peers, without risk of being subjected to heavy bail, severe fines, or excessive imprisonment. These provisions were, however, very little observed. The writ of *habeas corpus* had been suspended with impunity, and it was not till the

Civil rights insecure.

Cf. Medley, *Eng. Const'l Hist.*, 434–460.

Cf. Amos, *Eng. Const. in Reign of Charles II*, 107–259.

law of 1679 was passed that the writ was faithfully observed. It is difficult for us to imagine a condition of society that called itself civilized, where human life was held so cheap that the number of crimes punishable by death was over one hundred, where the stealing of a sixpence's worth of property was a capital offence, and where there was no guarantee that a person accused of a crime would have a chance to prove his innocence.

Political liberty uncommon.

Political liberty was by no means common. In the chartered boroughs, only the members of the favored guild — in many cases only the most favored members — had a right to vote for either the town officers or the representatives in Parliament. In the counties, none but freeholders who owned property worth forty shillings a year voted for members of the House of Commons, though the parish officers were nominally at least elected by the parishioners in most parts of the country. The offices were class privileges.

Disabilities of non-churchmen.

Religious liberty was almost unknown in every part of Europe, Church and State being everywhere united, and the man outside the authorized Church seemed hardly entitled to the protection of the State. Actual persecutions were not so common in England as on the continent, but Separatists, Quakers, and Catholics each came in for a share. By the law of 1562, Catholics were excluded from the House of Commons till the Catholics' emancipation bill was passed in 1829. In voting for public officials, all dissenters were necessarily excluded.

Economic freedom almost unknown.

While the period of monopolies and commercial restriction belonged rather to the later history of the seventeenth century and to the eighteenth, this was an age of anything but economic freedom. Custom as well as law prevented even freemen from taking advantage of opportunities which required a change of occupation or residence. A practical serfdom existed in many parts of the country, and agriculture was of course the only important occupation. Later in the century, unwise restrictive commercial, tariff, and navi-

gation laws became even more common, and stunted many growing industries. In every way a selfish policy was in the end ruinous to all concerned.

Real liberty developed much later.

Unfortunately there was not as great a change in the rights of the people as in the powers of Parliament during the seventeenth century; but the growing enlightenment of the nation and the growth of liberal ideas caused a gradual emancipation from the harsher and cruder forms of servitude. Through it all, in fact, throughout English history, the people show a spirit of sturdy independence, combined with a love of order and a respect for law, growing probably out of the system of well-preserved local self-government, of which all persons of the English-speaking race may well be proud.

Arbitrary action of the Stuarts increases power of Parliament.

48. The Revolutions of the Seventeenth Century. — Limited as were the powers of the Parliament in 1600, the Stuarts attempted to rule entirely without its aid. Although the members of Parliament were much more independent in character than those under the Tudors, it is questionable whether they could have increased the powers of either house but for the foolish stubbornness of the kings. They had only to assert the rights which had always been recognized as theirs, and which were now being violated, in order to win the cordial support of the nation. But they no sooner obtained promises of reform than these promises were broken. This falseness further weakened the position of the Stuarts. But it was not in their political relations toward Parliament, but because of their religious absolutism, that the great rebellion broke out. Strangely enough, the results of the civil war were more favorable to parliamentary independence than to religious freedom.

Borgeaud, *Democracy*, 11 *et seq.*

Boutmy, *Eng. Const.*, 91–99.

Medley, *Eng. Const'l Hist.*, 302–312.

Revolution of 1688.

After 1660 the individual subject was no more free from arbitrary restrictions than before. It required another struggle to have his rights not only recognized, but respected. The Revolution of 1688, with the political changes of the subsequent decade, is significant from two points of view. First, it marks the beginning of real individual liberty by

Montague, *Eng. Const.*, 146–156.

assuring freedom of the press, religious toleration, and respect for the new *habeas corpus* act by making the tenure of the judges for good behavior. Second, it placed Parliament in a stronger position; for while the Crown was not deprived of many important powers, the dependence of the Crown upon Parliament in certain particulars injured the former.

Nature of the Cabinet system.

Medley, *Eng. Const'l Hist.*, 110–111.

49. Cabinet System and its Development.[1] — It was this peculiar relation of the Crown and Parliament which, under the favorable conditions during the Hanoverian period, led to the development of the Cabinet system. This system may be described as one in which the powers of the Crown are exercised by a Cabinet responsible not to the monarch, but to the Parliament. The members of the Cabinet are leaders of the Parliament; they are in one sense the servants of the Parliament, in another its masters. They are the servants now of the Commons, because, if the lower house votes in opposition to them, they must either resign in a body or have a new election of the Commons on the point at issue. They are its masters because they still have the Crown's prerogative of introducing bills, *i.e.* they have the initiative in all important legislation. It was not till the middle of this century that the Cabinet system was fully developed.

Evolution of the Cabinet.

Wilson, *The State*, §§ 854–859.

Medley, *ibid.*, 104–112.

Montague, *Eng. Const.*, 163–173.

The Cabinet was originally composed of those members of the Privy Council who especially enjoyed the confidence of the King. As late as the time of William III they were really appointed by the monarch and responsible to him, but were then, as now, a body not recognized by law. Under George I and II the inability of the kings to speak English, and their ignorance of English politics, led them to leave the business of government to the prime minister, who kept his place if he could control Parliament. In this way the interdependence of the Cabinet and Parliament was brought about. George III tried to check this movement by seeking to exercise the powers of the Crown more directly, but the attempt ended in failure. As the Cabinet

[1] This section and the next are given for the sake of comparison with later development in America.

could not be responsible to two houses, who might disagree, the power to control the Cabinet was left to the Commons, who were, in their turn, before 1832, controlled by the Lords. Since that time the people, through their representatives, have exercised all the powers of government.

50. The Constitution made Democratic. — Before 1832 it was the custom to choose representatives from the counties and from boroughs that had been selected centuries before. It was one of the Crown's powers to alter the list of places sending members — one which the King had lost, but which the Parliament hesitated to assume. In these boroughs the suffrage varied widely, but in almost every case was very restricted. In the counties few voted, because few were owners of any land at all. In the Reform Act of 1832 the popular demands for a share in the government were granted. Suffrage was very far from universal, but the number of voters was more than doubled; while most of the rotten boroughs were struck from the list, and the towns that had grown up as a result of the new industrial movement were put on. This act was bitterly opposed by the Lords, who, by their very opposition, signed their death warrant. The parliaments called under it furthered the cause of reform and popular liberty, and through various measures, particularly the acts of 1868 and 1884, have made the government much more popular. It must not be supposed, however, that the aristocracy are without power. The political leaders have usually been drawn from their ranks, and form a class such as does not exist in this country.

The three reform bills of the nineteenth century.

Montague, *ibid.*, 203–212.

Compare references at end of chap. XXII.

QUESTIONS AND REFERENCES

England before 1603 (§§ 40–44)

a. As to whether English liberty was due to the Anglo-Saxons or the Puritans, compare Freeman, and Borgeaud's *Democracy in England and New England*, Part I.

1. Compare the influence of the feudal system upon the King's power in France, Germany, and England.

2. Show in what ways the contest between the King and the Church affected the history of England.

3. Give the causes which led to the growth of free cities. Show how they became free, and trace their influence upon modern freedom.

4. Did *Magna Charta* recognize the principle of "no taxation without representation"?

5. Did Parliament have the legal right to elect and depose kings before the Tudor period? Prove.

6. Give reasons for the disfranchisement of the poorer classes. Was it a benefit in any way before 1500? Why was it injurious after 1500?

7. State clearly why Parliament became subservient to the Tudors.

England in 1603 (§§ 45–47)

1. How was Parliament chosen in 1600? Give a brief history of the judiciary under the Tudors.

2. Why had local self-government been preserved when the national government was absolute?

3. Compare the different kinds of liberty in England (1600) with those existing, in Anglo-Saxon times, in Massachusetts and Virginia (1650); in the United States to-day.

England since 1603 (§§ 48–50)

1. Were the Stuarts more absolute than the Tudors? If so, in what ways?

2. Account for the difference between the action of the Parliament from 1530 to 1546 and from 1630 to 1640.

3. What part did Puritanism play in the events of the seventeenth century?

4. Give in detail the changes in government and liberty that followed the Revolution of 1688.

5. Has the Parliamentary system succeeded in preserving both the prerogative of the Crown and the rights of Parliament? Explain.

6. Did George III hasten or retard the development of government by the people?

7. In what ways was the Reform Act of 1832 a revolutionary measure?

Government of England To-day

a. On the central government, consult Macy, 9–116; Wilson, §§ 860–936; Traill, *Central Government;* Bagehot, *English Constitution;* Burgess, *Constitutional Law*, I, 91–97, 138–141; II, 59–76, 185–215, 338–346; Goodnow, *Comparative Administrative Law* (table of contents); Courtney, *Working Const. of United Kingdom*, 1–228.

b. On local government, see Wilson, §§ 938–1010; Chambers, *Local Government;* Maltbie, *English Local Government of To-day.*

CHAPTER III

THE COLONIAL PERIOD (1600–1763)

General References

Thwaites, *The Colonies.* The best single volume.

Hart, *Formation of the Union*, 1–41.

Channing, *Student's History of the United States.* An excellent summary of our history from 1492 to 1898.

Channing, *The United States of America* (1765–1865), 1–40.

Mace, *Method in History.* A suggestive interpretation of our history to 1865; to 1763, pp. 82–104.

Sloane, *French War and Revolution*, 1–116.

Lodge, *A Short History of the English Colonies in America.* Excellent studies on social life.

Channing, *Town and County Government in the English Colonies.* (*J. H. U. S.*, II.)

Frothingham, *Rise of the Republic*, chaps. I–IV. Especially good on the development of Union.

Story, *Commentaries on the Constitution*, §§ 1–197. The best constitutional summary.

Larned, *History for Ready Reference.* Under U. S. and names of states.

Lecky, *England in the XVIII Century*, II, 1–21; III, 321–331, 341–346.

Fiske, *Beginnings of New England; Old Virginia*, 2 volumes, and *The Dutch and Quaker Colonies of America*, 2 volumes.

Taylor, *Growth of the English Constitution.* Introduction. Traces continuous development from England.

Howard, *Local Constitutional History of the United States.* The authority on the subject.

Macdonald, *Documents Illustrative of American History* (1606–1775).

Winsor, *Narrative and Critical History of America*, III–V.

Bancroft, *History of the United States* (last revision), Vols. I, II.

Hildreth, *History of the United States*, I, II. American Commonwealth Series. Connecticut particularly valuable.

For further bibliography, consult Thwaites and Hart (see above), Winsor, *Narrative and Critical History*, III–V; Mace, *Manual;* Channing and Hart, *Guide.*

Settlements under land grants.

51. Method of making Settlements in America. — All of the early settlements of the English in America were small, and most of them were made in the same way. When for any reason a party of men wished to emigrate to the new world or to send out others in search of wealth, they sought a grant of land upon which to make their future homes. In some cases they were not only given a strip of land, but were incorporated into a company with a charter from the King. This charter stated the limits of their territory and told how the company should govern itself. In time the Atlantic coast and the banks of the larger rivers became covered with tiny settlements, often unconnected with each other, but usually made under the direction of the companies or of individuals called proprietors, who controlled that particular territory. It would scarcely be correct to say that these scattered settlements united to form colonies, for as a rule the "colony" existed quite as early as any of its settlements; but it is possible to assert that the "colony" had no real existence till these settlements became so numerous that they were consolidated and a common colonial government became necessary.

Colonial beginnings.

Thwaites, *The Colonies*, 55.

Character of the colonists.

Hart, *Formation of the Union*, § 4.

Channing, *Local Gov't in Eng. Colonies*, *J. H. U. S.*, II, 437 *et seq.*

Influence of soil and climate.

Hinsdale, §§ 70, 74.

52. Influences affecting Colonies. — The character of the local government and of the central government developed in each colony was largely influenced by the particular conditions to which it was subject. Perhaps the most important of these conditions was the character of the colonists themselves; for that determined, among other things, what kind of ideas and institutions were brought to the colony. Hardly less significant was the influence of soil and climate, which played such an important part in making the town the natural local unit of New England and the plantation that of the South, and which left such an important impression on the life of each section. Where people of other nationalities were found, they almost always left some trace, while the peculiar form of the church institutions, the introduction of different social classes, and finally the character of the earliest charter in each colony, with those

apparent accidents which helped to give it its peculiar development, were among the causes of many differences between the colonies.

Different types of local government.

Taylor, *Eng. Constitution*, I, 27–30.

Fiske, *Civil Gov't in U. S.*, 81–95.

53. **Lines of Political Development.** — It is customary to separate the colonies into three distinct classes, because of differences in the character of the local governments established: (1) the town system developed in New England; (2) the county system in Virginia and the South; and (3) the compromise or mixed system in the Middle colonies. The reasons why these kinds of governments were established in the different localities depend upon the influence which each one of the causes just mentioned exerted over that locality. How those causes happened to develop these types of local government, we shall see shortly. It is sufficient here to add that town, county, and mixed systems exerted a vast influence historically over belts directly west of the colonies in which each type was developed.

Previous history of charters.

Fisher, *Evolution of the Const.*, 28, 29.

54. **The Charter of 1606.** — It was the most natural thing in the world that, when the merchants of London and Plymouth wanted to make settlements in America for purposes of trade, they should have applied for a charter. During the Middle Ages there had grown up all over Europe the custom of granting to corporate guilds town charters, with extended privileges. Out of these had come land charters, which not only stated the bounds of the land grant, but defined the rights of the company with regard to liberty and government. Only six years before, in 1509, Elizabeth had given the famous East India Company a liberal charter, with almost complete power of self-government.

Provisions.

Brown, *Genesis of the Const.*, I, 52–63.

Macdonald, *Documents, 1606–1775.*

The charter grant to the Plymouth and London companies in 1606, while less liberal than that of the East India Company, gave very extensive territories. The Plymouth Company could settle anywhere between the 41 and 45 parallel, and the London Company between 34° and 38°. The government for each company was vested in an English council of thirteen persons, appointed by the King. Under this council were two others of thirteen each, appointed in the same way for the colonies. None of these councils were law-making bodies, as they merely carried out the instructions of the King. They were, however, given the right to defend the colonies and to coin money. The rights of the colonists were guaranteed by the stipulation that they should have "all the liberties, franchises, and immunities of free denizens

and natural subjects within any of our dominions, to all intents and purposes as if they had been abiding and born within this our realm of England, or in any other of our dominions."

Conditions were anti-democratic.

Mace, *Method in History*, 93–103.

Crane and Moses, *Politics*, 91–100, 118–125.

55. General Character of Political and Social Conditions in the South. — In one sense most of the English settlements were made under the charter of 1606, but it was upon Virginia that the charter exercised the greatest influence. The subsequent charters of that colony were direct successors of that instrument, but more democratic in spirit, as the powers of government were soon transferred to the whole body of stockholders. Under these charters many settlers migrated to America. Their character might readily be imagined from the motives that prompted them, as practically all were in search of adventure or wealth. Class distinctions were made almost from the start, and became much more prominent as the colony grew. The great tobacco plantations fostered a landed aristocracy at the same time that they made slave labor necessary, and the importation of indented servants profitable. Such social differences counteracted all influences toward equality of any kind. General education would have been out of place in such a system. All ecclesiastical, economic, and political advantages gradually became the possession of the highest class, who looked upon themselves as the natural leaders. It is not strange that, under such circumstances, the whole life of the people should have been productive of inequalities, which were clearly expressed in absence of local self-government, restriction of the suffrage, and concentration of power in the hands of a few.

Two representatives from each town, hundred, or plantation.

Channing, § 43.

56. The First Virginia Assembly (1619). — These restrictive tendencies were not especially noticeable at the very beginning. The first fifteen years of Virginia history showed great constitutional progress of all classes then in the colony. The settlers had shown themselves so opposed to the arbitrary rule of the governors sent over that the majority of the English company, who belonged to the liberal party, decided to try an experiment in self-government. To

that end they, in 1619, directed the governor, Yeardley, to call two representatives from each town, hundred, or plantation to assist him and his council in making the laws. In this way was a spirit of independence in America combined with the liberalism of an English company in the development of the first popular assembly in America.

Fiske, *Old Va.* I, 185–188.

57. **The People and the Government in the South.** — By the Royal Instructions of 1621 this system of colonial government was indorsed and continued; and when, in 1624, the Virginia Company was dissolved and the charter recalled, the King took the place of the company in appointing the governor, the council, and the other officials, although the people were still allowed to choose representatives to sit with the council. This model was imitated by the other colonies in the South. The early attempt to allow all the freemen of Maryland to have a part in making the laws soon gave place to such an assembly, sitting not as a separate body, but with the governor's council. Carolina did not even attempt to use the cumbersome constitution of Locke, but early adopted the Virginia system, which seemed so well suited to the conditions. Yet even the rough life of the frontier did not produce perfect equality. The existence of well-defined classes, graded from slaves up through indented servants to the landed classes, affected politics as well as society, and kept the suffrage from the hands of all the freemen.

Assembly of landowners continued.

58. **Local Government in Virginia.** — In local government the people took even less part. The soil was so well adapted to agriculture that plantations naturally sprang up everywhere, and towns did not flourish. As a country settled with plantations has a very scattered population, it possesses few needs that require the attention of the whole people for even a large district. In consequence of these conditions the county was much more important than the parish. This left to the vestry of the parish few important duties, and in time the vestry came to reëlect its own successors according to the custom of many parishes and more

Local government comparatively unimportant.

Hinsdale, §§ 74–79.

Channing, *Local Gov't, J. H. U. S.*, II, 474–489.

Closed vestries.

Fiske, *Civil Gov't*, 59–61.

municipal councils in England. Such "closed vestries" were, of course, fatal to the political development of the people, who became so indifferent to questions of government as not to use opportunities that were offered to improve their condition.

Centralized county government.

Taylor, *Eng. Constitution*, I, 38–39.

Howard, *Local Const'l Hist.*, 393–397.

The county government was even less favorable to political equality. The county officers, the lieutenant, the sheriff, and the justices of the peace, who had administrative as well as judicial duties, held office through appointment by the governor. The people were debarred from any share whatever in the direct conduct of affairs. Yet the aristocracy who controlled the parishes and the assembly did make themselves felt in the government of the county, because by custom the governor chose the county officers from their number.

Democratic ideas and practices of the Puritans.

Mace, *Method in History*, 86–93.

Borgeaud, *Democracy*.

Crane and Moses, *Politics*, 101–117.

59. **General Character of Political and Social Conditions in New England.** — New England was settled almost exclusively by English Puritans, most of whom came to this country in order to get rid of the arbitrary church government imposed upon them by the ministers of Charles I. They believed in simplicity in church rule, in election of pastors by the congregations, and that the conduct of the individual should be controlled by the standards of Scripture. They had not separated from the English Church, but had attempted to reform it by persuading the Church to adopt their methods. When that failed, a great many congregations migrated as one body to America. On account of similar interests, fear of the Indians, and the lack of large fertile valleys suitable for plantations, they settled together and usually established what was known as the "Independent" form of church government, *i.e.* the whole congregation chose the pastor, looked after the finances and other matters. It was very natural that the congregation should look after what few secular matters needed attention, so we find the congregation formed what was really a town meeting, in which only church members could vote. In this way the religious organization of the Puritans made possible and necessary

what was the most democratic form of local government then in existence, but it also made religious qualifications for voters almost as necessary.

The Puritan spirit produced some interesting results, because it was democratic in one sense and exclusive in another. The dependence upon Scripture led them to establish schools in order that they might study to better advantage. Their attempts to govern themselves in their own way led them to restrict the privileges of the non-Puritans of the colony, and those whose privileges were thus restricted with true Puritan spirit protested with such success that the new government was even more democratic than the old. Thus the spirit of the Puritans leavened the whole community. It never overcame religious exclusiveness nor produced social equality, but it effectually counteracted every tendency toward centralization in government, made education at public expense the policy of the colonies, and gave to all practically the same civil rights.

Liberality and exclusiveness of the Puritans.

60. Early Constitutional Development in Massachusetts. — The charter which the King gave Massachusetts Bay Company (1629) was a very liberal document. It placed the entire control of the government in the hands of the stockholders, and permitted them to elect the governor, deputy-governor, and the eighteen assistants, and to control the admission of new members. It was this instrument which Winthrop and his companions boldly carried to America the year after settlements were begun. As there were already scattered church congregations in which each member was allowed a voice in the conduct of all affairs, ecclesiastical or secular, these church members now took the places of the former stockholders, *i.e.* they were given the same right to vote. So the charter of a corporation became the charter of a society in which Church and State were closely united, but to which the Church brought the life-giving principle of popular government. As the colony grew and the government became more complicated, tendencies less favorable to growth appeared. The non-church members began to out-

Charter of 1629.

Channing, § 59.

Early civil disputes.

Montgomery, *Student's Amer. Hist.*, §§ 87–89.

number the communicants so that the suffrage really became quite restricted. At the same time the general court, as the body of assistants was called, began to legislate with regard to matters purely local, recklessly invading the sphere of the town meetings. This centralizing tendency met with universal opposition, leading to two results. First, all purely local matters were left to the towns, and second, representatives of the towns began to sit with the assistants, in order to help them in making the laws and to guard the interests of the towns.

Victories of the Liberals.

Mace, *Manual of Amer. Hist.*, 129–131 (text).

But the liberalism due to the opposition of the Puritan spirit to Puritan exclusiveness did not stop there. In 1662, by what was known as the "halfway covenant," many persons not church members were given the privilege of voting. Before that, the lack of a written code had made it possible for the magistrates to apply the laws loosely, and had caused many complaints. In 1641 the "Body of Liberties" remedied this state of affairs by guaranteeing to all the right of trial by jury, and of petition and equal protection before the law. Suffrage for members of the town meetings was altered so that many who could not vote for representatives might vote for selectmen.

A more democratic government involving new political principles.

Thwaites, *Colonies*, § 58.

Johnston, *Connecticut*, 63–78.

Borgeaud, *Democracy*, 117–142.

61. **The Connecticut Constitution (1639).** — The colonies that were planted south of Massachusetts showed much the same characteristics. The self-governing town was everywhere the great stronghold of liberty and the basis of government. It was nowhere better developed than in Connecticut. The people of Connecticut had emigrated from Massachusetts largely because they opposed the narrowness shown in the strict religious test for voters, though they later outgrew their scruples and applied a test similar to that of Massachusetts. As they had no charter, they arranged for themselves a system of government like that in Massachusetts. The influence of the charter as a constitution is clearly shown by the embodiment of these fundamental laws in a written document; but the fact that these "Fundamental Orders" were *created by the people themselves and not given*

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by an outside person marks a distinct step in advance in constitutional development. No mention is made of assemblies of all the freemen of the settlement, but deputies from the towns were to meet with the governor, deputy-governor, and magistrates (assistants), while the governor was elected by the general court.

Events between 1650 and 1700.

Channing, §§ 81–84, 96–99.

A system of government was recognized and guaranteed for both Connecticut and Rhode Island by their liberal charters of 1662 and 1663. In the latter colony the spirit of freedom went farther than in the others, by preserving the right of suffrage for freemen after it had disappeared elsewhere. About the time these charters were granted, that of Massachusetts was confirmed, on condition that certain things were done for the Crown and for members of the Church of England. The failure of Massachusetts to carry out its part led to the revocation of its charter in 1684, and was followed by the unsuccessful attempt to revoke the charters of Connecticut and Rhode Island. Under William III, Massachusetts obtained a new charter, which made property and not religion the basis of the suffrage, and left the appointment of the governor in the hands of the King.

Character, methods, and influence.

Fiske, *Civil Gov't*, 16–31.

Howard, *ibid.*, 62–74.

Channing, in *J. H. U. S.*, II, 459–474.

62. The Town Meeting. — The influence of the New England town meeting upon American constitutional liberty can hardly be overestimated. The meetings were held at least once a year, usually in the spring, and all "freemen" were accustomed to come together to discuss and decide matters pertaining to local or central government, to vote for the assistants, in some cases for the governor and his deputy, and to choose representatives to the assembly as well as their own town officers. As every town had at least one deputy in the assembly, interest in the affairs of the colony was always maintained. In the local government, the people chose selectmen to decide unimportant matters that came up between the sessions of the town meeting; but the records were often subjected to a very searching criticism, so that supervision was constant and careful. Other officers, such as the constable, overseers of the highway, overseers of the poor, and town clerk were chosen at the spring meetings each year, and

were constantly under surveillance. This was possible because almost all of the towns were small and compact, and because interference in local affairs by the assembly had not been allowed. In the selection of town officers, suffrage was at first practically the same as for choosing representatives of the colonial government, but in time many non-freemen who were property owners were admitted. At the close of the seventeenth century any landowner with property worth forty shillings a year was allowed to vote.

Popular assembly; supervisor system for localities.

Mace, *Method in History*, 103–104.

Goodnow, *Administrative Law*, I, 178–185.

Howard, *ibid.*, 362–364.

63. **New York.** — In the colonies conquered from the Dutch the unit of local government had generally been the manor, but it was rarely or never self-governing. The central government was autocratic, and but little influenced even by the nine advisors chosen by a few of the people. The English occupation introduced the general principles of English liberty, and in the course of twenty years led to the establishment of an assembly chosen by the freeholders to sit with the councillors and make the laws. No taxes were to be levied without the consent of this assembly. The manors were gradually supplanted by the township system, which as a late growth possessed much less vitality and power than in New England. The chief peculiarity of the system was the method of having *the towns in each county choose supervisors* as an administrative assembly for that county.

Commissioner system in the counties.

Howard, *ibid.*, 373–387.

64. **Pennsylvania.** — The system of local government that was most common in Pennsylvania was, like that of New York, a compromise between the county and the township type, but it was more influenced by the county, as the colony was so much nearer Virginia. Instead of having supervisors from the townships as in New York, the county was governed by commissioners elected from three or five districts. There was little or no township government at the first, and the county officials were given extended powers.

While the political institutions of the Quakers are not especially noteworthy, their political and social ideas belonged

to the nineteenth rather than the seventeenth century. The principle of equality was at the basis of these ideas, and led in many cases to extremely liberal and humanitarian views. The treatment of people belonging to other sects was not marked by the harshness observable elsewhere, the suffrage was subject to fewer restrictions than in other colonies, and an attempt was made, though without success, to abolish the death penalty except for murder.

Advanced ideas of the Quakers.

65. **Central Government: General.** — It has been customary to divide the colonies into three classes, according to the method of appointing the governor: the *Royal*, in which the governor is the representative of the King; the *Proprietary*, in which he is appointed by the "proprietor"; and the *Charter*, which have governors elected by the people. A more perfect classification is that suggested by Professor Osgood, who separates them into Corporation and Provincial colonies, the former acting as a corporate body, the latter in direct dependence on the mother country. In many of the colonies we find that the frame of government is to some extent outlined in a charter or in written instructions with which the system must conform. All had the three departments of government more or less separated, and legislatures in all degrees of development. Each colonial government was entirely separate from every other, but was in close touch with the home government, and in regard to most matters subject to its supervision.

The classical division of the colonies.

Story, *Commentaries*, §§ 159–161.

Cf. Channing and Hart, *Guide*, § 147.

Professor Osgood's classification.

Osgood, in *A. H. A.*, 1895, 617–627.

In 1760 the only pure charter colonies were Connecticut and Rhode Island. Massachusetts approached the charter form, but had a governor appointed by the Crown. Pennsylvania, Delaware, and Maryland were Proprietary, the rest were Royal.

66. **The Charter as a Colonial Constitution.** — Although so few of the colonies were classified as charter, in one sense all of them showed the influence of the charters which most of them had in the beginning. As has been said, these charters were documents issued by the Crown to individuals or to incorporated companies giving a grant of

Nature of a charter.

Thwaites, *The Colonies*, § 120.

land, defining the rights of the company, and giving a plan for the government of the company. In theory, these charters were irrevocable by the Crown, though forfeitable to it; but in no way before the Revolution was the right of Parliament to interfere with any charter admitted. The Stuart kings did, however, annul charters with impunity and without sufficient cause; but under the Hanoverians this illegal practice was discontinued.

(On the whole subject, see Morey, in *A. A. A.*, I, 537–544.)

Most of the colonies had possessed charters which they in time surrendered or lost, but Massachusetts, Connecticut, and Rhode Island continued to govern themselves according to their charters until the Revolution. We have already seen in some detail how the earliest charters came to be the fundamental law of Massachusetts and Virginia, and how other colonies embodied in later charters a more perfect system of government modelled upon one or the other system. These later charters nominally created corporations, so the legal fiction of a trading company was preserved, but to all intents and purposes the Connecticut charter of 1664 was the Constitution of 1639 recognized by the King. It thus had the sanction of the people, which was necessary to make it a constitution, and the sanction of the King, which was necessary to a colonial constitution. While the other charters represent these ideas less perfectly, they were well enough developed to make them essentially the same.

Development of the "charter constitution."

In those colonies that had lost their charters, the charter government was preserved through definite instructions or frames of government, and the charter influence is clearly seen in the determined protests of the people to any arbitrary change of the spirit or form of government. Frequent reference was made to the rights of the charter, even though the charter itself had long since been annulled. The persistent and pretty well recognized claim made by Virginia to the northwest territory on the basis of her charter of 1612 is but a familiar example of this. So that to a limited extent all of the colonies enjoyed the privileges of a written constitution.

The persistence of charter government.

In all of these colonies, if a citizen believed the colonial law conflicted with the charter, he had the right to bring the matter into court for settlement, with appeal to the Lords of Trade, so that a principle similar to our present interpretation of our constitutions by the courts was recognized.

The principle of unconstitutional legislation. Cf. § 376.

67. The Governor. — In eight of the thirteen colonies the governor was the representative of the King. He was appointed by the Crown and removed at pleasure. The tenure was usually brief, and the men of a very ordinary type, with some notable exceptions. Where election was in the hands of the people, the term was one year; but it was customary to reëlect a satisfactory official year after year. The governor's power varied greatly, according to the extent to which the legislature had made good its claim to a real share of the government. He had an absolute veto on all legislation subject to revision by the King. He usually had charge of public lands, made appointments for all offices, including judgeships, exercised the prerogative of pardon, had command of all military forces of the colony, and was in general the most powerful force in the government. He was usually aided by a council, which in many cases was the upper house of the legislature. To this council he looked for advice, but he was seldom bound by its views. The council did not have the control of administration.

A powerful and arbitrary official.

Hart, *Contemporaries*, II, 153–170.

68. The Legislature. — In the royal colonies the legislative power was vested in one or two houses and the governor. In some of the royal colonies the relation of the legislature to the executive was much the same as in England at the beginning of the seventeenth century (§ 45), that is, the assembly had little more than the power of approving bills proposed by the governor. Only in finance did it possess any real power. In the colonies where local self-government was more common and more real, the legislatures introduced most of the bills, though the influence of the governor in legislation was considerable.

General powers.

Story, *Commentaries*, §§ 166–171.

By 1763 the bicameral system was in use except in Pennsylvania, Delaware, and Georgia. The lower houses were

Organization.

always elected by the people, either from towns, counties, or other districts. The terms were short. Of the upper houses, those of Connecticut and Rhode Island were chosen by districts, that of Massachusetts by the assembly. In the other colonies they were usually appointed directly by the governor.

Difficulties in legislation.

When bills had been passed by the legislature, there were several obstacles to be encountered before they became laws. There was, first, the governor's veto, except in Pennsylvania. Then the law might be set aside as in conflict with the charter, if there was one, or in conflict with the laws of England. This might be done by the judges of the colony, or much more commonly by the Lords of Trade. Finally, it might be rejected by the Lords because it was objectionable to the King.

Not a mere process of imitation of Parliament.

Fischer, *Evolution of the Const.*, 123–127.

69. **Development of a Bicameral System of the Legislature.** — In spite of the fact that the English Parliament with its two houses placed before the eyes of the colonists a legislative model, the single house remained the practice of the colonies during most of the seventeenth century. The representatives of the people sat with the governor's assistants, except in a few instances. An attempt was made by Locke's constitution for Carolina to establish two houses totally distinct, with the exclusive right of initiation vested in the upper house, but this was never put into practice. In Pennsylvania such a plan was indeed tried, but the reaction proved so strong that in 1696 the upper house not only lost the right of initiation, but was merged in the assembly, with which it sat till the time of the Revolution. In most of the other colonies the great struggle between the people and the governors, during the first half of the eighteenth century, led to the separation of the two parts of the legislature so unlike in interests, character, and manner of appointment. In New England, although both the assembly and the assistants were chosen by the people, the influence of the Parliamentary model, the old customs in Massachusetts, and the method of electing the assistants by districts, led eventually to the entire separation of the two houses.

70. Growth of the Power of the Colonial Assembly. — Although the popular assemblies were everywhere common in 1700, it cannot be said that, out of New England, they were very strong; but during the next half century they were greatly developed through different contests with their governors. The governors, representing the King or the proprietor, often had a very high opinion of their own prerogative, and a very low one of the rights of the people. The point of view of the high-spirited assemblies was exactly opposite. In 1693, as the charter was silent on the subject, Massachusetts had asserted the right of the assembly to originate all money bills. This claim had not been allowed by those in authority in America or England, but was the basis for colonial pretensions. There was a constant struggle to see whether a regular salary should be voted the governor, or whether it should be renewed from year to year, but in 1735 the Lords in Trade gave up the attempt to make Massachusetts vote a regular stipend. In Virginia the assembly had gained an advantage by obtaining the right to appoint a treasurer, so that they were unusually successful; but, in general, in the South the governors gained the upper hand, while north of Maryland the assemblies won the day.

Contests between the governors and the assemblies ending in popular victories.

Thwaites, *The Colonies*, §§ 123–126.

Taylor, *Eng. Constitution*, I, 43–45.

It must not, however, be supposed that the contests were solely over salaries. It might be over the granting of unoccupied lands claimed by the governor as the representative of the King, or over the taxing of the proprietor's property. But whatever it was, it usually was narrowed down so that the assembly refused to vote the governor's salary till he did as they wished; and as the governors seldom remained long, their temporal needs were more important to them than a question of constitutional right, so the assemblies usually won.

These conflicts had both their good and their bad side. They caused very great ill-feeling between the people and the governors, though that never extended to the King, and they constantly interfered with the transaction of business. On the other hand, they maintained the interest of the peo-

Good and bad effects of the contests.

ple in public matters, developing a spirit of independence, trained a body of men in the conduct of the colonial governments, and produced such popular government as existed nowhere else on the globe. But even those advantages were not unmixed, for the voting classes and especially their representatives who were sent to the assemblies often attempted to exercise rights to which they had no claim, and felt that any invasion of their claims was an act of tyranny.

The "Let alone" policy.

71. Relation of the Colonies and the King. — During the entire colonial period England did not attempt to exercise any special control over the colonies. Throughout the seventeenth century the kings had been kept too busy looking after Parliament to pay much attention to the colonies, which were left to develop much as they pleased. Toward the close of the century more attention was paid to the creation of councils, commissions, and boards whose members were appointed by the King in Council for the purpose of supervising American affairs. In 1696 there was formed a permanent board known popularly as the Lords of Trade, which was instructed to correspond with each colony so as to keep informed about it and in touch with it, to take charge of all matters pertaining to America, to hear all appeals and complaints and veto laws that were repugnant to the laws of England. Either directly or through this board, many ministers tried to meddle with the affairs of the colonies, though the long period under Walpole was marked by leniency of colonial control. The King in Council was able to exercise great influence in America through the appointment of the royal governors. This official could appoint his council (usually the upper house of the legislature, and the highest colonial court), and even regulate such details as the qualifications of electors, the towns which should be represented, and the number of members of the assembly. He possessed an absolute veto upon all legislation; and even if he yielded to the assistants, the laws might be nullified by royal rescript.

Lords of Trade.

Fiske, *Civil Gov't*, 156–157.

Channing, §§ 79, 113–115.

Larned, *Hist. for Ready Reference*, 3168–3173, 3180.

72. Parliament and the Colonies. — The exact relation of Parliament to the colonies throughout this period, and more especially after 1760, was a matter of considerable dispute. The colonies had from the first admitted the right of Parliament to regulate commerce largely because the illiberal navigation and sugar laws were not enforced. It was admitted on both sides that no law of Parliament should apply to the colonies unless they were especially mentioned in it. Perhaps it was this, perhaps the dread of interference from any government not of their own making, that caused the colonies more especially in New England to consider Parliament merely an English legislature, while it was looked upon in Britain as the law-making body of an empire. At any rate, although all of the colonies at some time or other recognized the supremacy of Parliament in all matters except that of taxation, they often bitterly opposed a specific application of this imperial power. Taxation was not included because, according to the theory of English and colonial Liberals, taxes were a grant of the people and not a legislative right. This led them in time to argue that taxation without representation was tyranny; and that, as they could not be represented in Parliament, the right of taxation belonged exclusively to their colonial assemblies.

Different views regarding the power of Parliament over the colonies.

Channing, *United States* (1765–1865), 28–34.

Frothingham, *Rise of the Republic*, 123–127.

73. Political Freedom. — We have already noticed to what degree the colonies were self-governing. Beginning with the two republics which elected practically all of their officials, local or general, we run through a series of changes until we find colonies especially south of Virginia which had no local self-government and with popular assemblies of little power. Except in New England, Virginia, Maryland, and Pennsylvania, the early history of the colonies shows that the people had little or no influence. Later, assemblies were established though called irregularly, and in some instances a share in the local government was permitted. But for about half the colonies the system of suffrage was at all times illiberal and largely dependent on the will of the governor. In Virginia the suffrage came to be greatly restricted so that

Popular participation in government.

Suffrage in the colonies.

Colby, in Lalor, III, 824–825.

Cleveland, *Growth of Democracy*, 130–142.

Bishop, *Elections in the Colonies*, 46–97.

See Hart, *Contemporaries*, II, 171–173.

but a small portion of the population voted at all, while the holding of office was in the hands of the highest class. In New England the religious qualifications of voters were finally abolished (1691) through the efforts of the Crown, and property substituted. This excluded about nine-tenths of all adult males from participation in colonial elections, and at least half from taking part in the town meetings. Even Rhode Island abandoned her earliest principles and joined in the general movement. The only exception was Pennsylvania, which proved true to the principles laid down by Penn, but even here the voter must be a freeholder or have paid taxes. In general, we may say that during the eighteenth century religious tests excluded all except Protestants from voting; while in the North property of a certain value was required, and in the South estates of a certain size were necessary.

Restrictions on trade; navigation acts.

Channing, §§ 79, 114.

Beers, *Commercial Policy of Eng.*, 153–158.

74. **Economic Freedom.** — The spirit of the seventeenth and eighteenth centuries was much less favorable to economic freedom than our own. The feeling that one country was made wealthy by impoverishing another was quite common, and many felt that they were benefited by the restriction of the privileges of others. Colonies were considered sources of profit rather than real parts of the mother country. The navigation laws passed by England were in harmony with these ideas, for they sought to prevent trade between the colonies and other countries than England, and discriminated against all but English and American ships (1660). Certain "enumerated" articles, including tobacco, could be sent only to England. Goods secured in the old world must be purchased through English merchants (1663). The sale of manufactured articles was forbidden outside of the place where they were made. This applied especially to wool (1699), beaver hats (1732) and iron (1750). Foreign sugar and molasses were subjected (1733) to prohibitive duties. England paid bounties for raw materials, and before 1763 failed to enforce these laws. The colonies as well as England passed discriminating legislation, for government in favor of

the governing classes was the rule everywhere, and even the details of living were not free from governmental interference. Laws to regulate the price of labor were passed at frequent intervals, though without effect. Custom often rendered it difficult to break away from the parental occupation, and apprenticeship regulations hampered mobility of labor. Yet in spite of these annoying restrictions it may well be doubted whether any other country on the globe possessed the economic freedom of America.

Narrow policy of the colonies.

Wright, *Industrial Evolution of the U. S.*, 264, 265.

75. Social and Other Inequalities. — It is customary to make a distinction between the Northern and the Southern colonies, and say that classes existed in one, but not in the other. While the South did possess more numerous and better defined classes, the statement is far from being true. Among the whites of the North, social lines were drawn quite sharply. We cannot show this better, perhaps, than in the statement that even after 1770 the students of Harvard were classified according to social standing. The English idea of social inequality had a strong hold everywhere, least, perhaps, in Pennsylvania, and most in the South. In the Middle and Southern states there were, however, elements which made classes more marked. Here we find in great numbers two kinds of indented servants who were practically serfs for a term of years. The first, called redemptioners, bound themselves to service in order to pay their passage, the second were convicts working off a sentence. Toward the latter class, especially, laws were very severe, and treatment was far from humane.

Prominence of classes.

Channing, *United States* (1765–1865), 15, 16.

Little was done during the colonial period to improve the condition of the poorer or defective classes. Temporary relief was given through special officers, but no provision was made for the aged, for the blind, or the insane. Hospitals were scarce, and the prisons were of the worst description. Everywhere laws regarding debtors and criminals were harshly enforced. There was as yet little thought of the duty that the State owed her unfortunate classes.

Lack of care for unfortunates.

Outside of New England all of the colonies had adopted

Inheritance laws.

Story, *Commentaries*, §§ 179–181.

the English custom in leaving the whole of an estate to the oldest son. In the Puritan colonies, a double portion went to the eldest, the rest sharing equally.

Household and plantation slaves.

Hart, *Formation of the Union*, § 10.

Channing, *United States* (1765–1865), 12–14.

76. Slavery.—Slaves were introduced into Virginia as early as 1619, and were to be found in every colony in 1760. At the North, and at first at the South, they were usually house servants, and as a rule were treated with consideration, if not with kindness. It was only when the whites began to employ large numbers on the plantations and rice fields of the South that harsh laws were passed. Yet before the Revolution the Southern leaders made efforts to prevent the further importation of slaves, though without success.

Opposition to union.

Frothingham, *Rise of the Republic*, 39.

77. Union before 1750: New England Confederation.—There was very little real unity in spirit or in government among the colonies. Each had perfected its own peculiar system in such absolute isolation that the thought of union seemed to mean nothing more nor less than a surrender of rights to the very one who had refused to acknowledge those rights. The reason for this feeling lay in the fact that attempted union was ordinarily proposed by the Crown for the purpose of better controlling the colonies, as had been the case when Andros was given control of New England in 1687. The fact that union under such conditions was not perfected is, of course, an almost unmixed blessing.

Forces favorable to union.

There were, however, other forces working toward union, though none of them, aided as it was by the many common bonds of a similar language, customs, and institutions, was strong enough to overcome the prejudices of the people and their fear of the Crown. Among these forces the most pronounced and most influential was the dread of a general Indian uprising. It produced the New York Congress of 1690, and that at Albany in 1754. It was, in fact, the fundamental cause of the New England Confederation of 1643. This loosely joined league of four colonies (Massachusetts Bay, Plymouth, Connecticut, and New Haven) was not a very high type of union, as the central government was composed of two commissioners from each member with a number of

The New England Confederation.

Channing, §§ 72, 73.

nominal powers relating to matters of common interest, but absolutely without power to enforce their requests. It did not interfere with local government in any way, as each colony was left complete control of its own affairs. It was of some value in the regulation of inter-colonial extradition, and rendered the efforts of the colonies against the Dutch, and much more against the Indians, very effective. Its religious narrowness is shown by its refusal to admit heretical Rhode Island and unbelieving Maine, and its usefulness was constantly impaired by the continual opposition of its largest member, Massachusetts; but for forty years it not only made the action of the colonies more effective, but trained them for united action.

Frothingham, *ibid.*, 39–43.

Fisher, *Constitution*, 219–221.

78. **Albany Plan of Union.** — Other plans for union were not wanting, notably one proposed by Penn in 1698, and many congresses were held at which from two to five colonies were represented. The most important of the congresses and the most valuable of the plans of union were those of Albany in 1754. The congress was called to make a treaty with the Iroquois in order to prevent them from aiding the French in the coming struggle. Seven colonies were represented by some of their best men. The making of the treaty was quickly overshadowed by the recognized need of military union. A plan was proposed by Franklin, and adopted with few changes, which provided for a president-general appointed by the Crown to be the executive and military commander with power of appointment. The colonies were to be represented in an assembly according to the amount they paid into the treasury of the union. Although mainly an advisory body, this assembly had power to levy duties and colonial taxes through requisitions upon the colonies, to which all existing rights were guaranteed. While the plan was unanimously adopted by the congress, it was universally condemned by the legislatures of the colonies, and failed of approval in England. The remark made by Franklin regarding this action shows at once the reason for its failure and the feeling of the colonies and the Crown toward each other, "The

Its provisions.

Clark, *Civics*, 14–15.

Frothingham, *ibid.*, 132–151.

Larned, *Hist. for Ready Reference*, 3175–3178.

Why it was rejected.

assemblies all thought there was too much *prerogative*, and in England it was thought to have too much of the *democratic*." The time was not ripe for concerted action; nothing less than a great national movement could create the great national need of Union.

Was the colonial development "English" or "American"?

Hart, *Union*, § 5.

Wilson, *The State*, §§ 1060–1064.

79. Comparison of American and English Constitutional Development (1600–1770). — If the question were asked how far the constitutional development of the colonies was English, our answer would depend entirely upon what was meant by "English" in this case. If we meant English in the sense that the English spirit of sturdy independence had been preserved, that English methods of steady development were clearly apparent, that an inheritance of English law and English institutions was at the very basis of the whole legal and political system, we should answer that American development was little different from English. But if we seek to make "English" synonymous with the constitutional development of England from 1600–1770, and look upon the colonies merely as a part of England, we are amazed at the difference displayed. In a sense we may say that constitutional development in England and America started from much the same point in 1600, and under conditions quite unlike developed along very different lines in the most natural way possible. But starting from the same point refers rather to a common heritage of law, liberty, and local institutions than to the more advanced form of government. So far as local institutions are concerned, we find every form of the manor and parish transplanted to America, and put into practice by men from almost every class of English society. But in the development of central government, a totally different set of conditions plays the most important part. In the first place, we find a trading company's charter transformed into a *quasi*-written constitution, unalterable except by mutual consent of the grantor and the grantee, and setting a standard according to which laws may be kept or set aside. Nothing could be more foreign to that fundamental English idea, the supremacy of the legislative body, whether that power was vested in the Crown and Parliament or in Parliament alone. While the forms of central government in the colonies were so entirely different from those of England at first, being nothing but the enlarged governing body of the company, they grew to be more alike. By degrees conscious or unconscious imitation led to the introduction of the representative system, the erection of a separate judiciary, the development of a bicameral system of the legislature with the upper house a partly administrative and partly judicial body like the House of Lords, and a separation of legislature and executive in the end much more complete than that which

England and America start from same point (1600), and develop along different lines.

existed in England. At every step, American conditions produced a modifying influence upon the English forms introduced, so that had England been in 1760 what she was in 1625, there would have been a great difference between the two countries in the more complete separation of departments in America and in the different relations of the departments to one another. But the central government of England was in 1760 very different from that of 1625. The old system of a ministry dependent upon the King has been largely replaced by one dependent upon the Parliament, so that the veto no longer existed as in America. The English executive and the legislature have always been in theory and in practice but different parts of the same body, with one part controlled by the other, and even the bitter contests between Parliament and the Stuarts failed to separate them as they were separated in America, but gradually shifted the chief power from the King to the Parliament.

American conditions more favorable to liberty

Besides these differences in the Constitution and in central institutions, there had grown up a difference in civil and political liberty. The rough frontier life had produced an equality that could never exist in England. Harsh and bigoted as many of the colonial laws appear, they were in advance of those in force in Europe. Outside of the colonies almost the only persons that voted for representatives to a central government were in England, and yet the assembly of Massachusetts was vastly more representative than Parliament, and the suffrage in Connecticut was five times as liberal as that of Yorkshire, while the proportion of voters in Pennsylvania was twice as great as in Connecticut. The small size of the colonies had trained a large class to do what a few members of the community did in England, so that the average American was much more zealous of his rights than the average Englishman. From this hurried sketch we can easily see how far apart England and America had been carried by the constitutional development of the seventeenth and half of the eighteenth centuries.

QUESTIONS AND REFERENCES

Introductory (§§ 51–54)

1. What was the European idea of a colony? (Thwaites, 18–22.) Compare with the Greek and the Roman idea. Compare the Spanish rule with the English rule. (Moses, *Spanish Rule*, 17–26.)

2. What is the difference between a land grant, a charter, and a constitution? Apply your definitions of the last two to *Magna Charta*, Bill of Rights, and fundamental orders of Connecticut.

3. To what extent did typography and church institutions influence

the customs and institutions of Massachusetts, Virginia, and Pennsylvania ?

4. How do frontier settlements tend to modify the institutions of any country which are transplanted to them ?

5. What right had the King to change a charter ? to recall it at will ?

The Southern Colonies (§§ 55–58)

1. What English institutions were brought to Virginia ?

2. Compare the Virginia charters of 1606, 1609, and 1612 as to territory and government.

3. What influence did tobacco have upon (*a*) the growth of Virginia, (*b*) the social classes, (*c*) the establishment of the county system of local government ?

New England (§§ 59–62)

a. On the Puritans, see Eggleston, *Beginners of a Nation ;* Ellis, in Winsor, III, 219–244 ; Palfrey, *New England*, I, 101–132 ; Osgood, *The Political Ideas of the Puritans*, in *P. S. Q.*, VI (1891), 1–28, 201–231 ; Channing and Hart, *Guide*.

1. Is the union of Church and State a modern idea ? Did the Puritans believe in religious freedom ?

2. How did the Puritan spirit show itself in the dealings of Massachusetts with Roger Williams and with England ? Was there any justification for their actions ? Any advantage from their course ?

3. Compare the central governments of Massachusetts in 1640, 1687, and 1700.

4. Compare the government of the townships and the counties in Anglo-Saxon England, England in 1600, Massachusetts in 1650, and Virginia in 1650.

Middle Colonies (§§ 63–64)

1. To what extent has the compromise system of local government been adopted throughout the United States ?

2. Why did the local governments of the colonies influence our later history more than the central government ?

3. Did Massachusetts or Pennsylvania exert the greater influence on our later history, and in what ways ? In which were the political and social ideas more like those of to-day ?

Colonial Government (§§ 65–72)

a. On England and the colonies, see Larned, 3168–3173, 3180 ; Story, *Commentaries*, 185–190; Lecky, *England in XVIII Century*,

III, 321–331, 342–345 ; Osgood, *England and the Colonies*, in *P. S. Q.*, II, 440–460 ; Hazeltine, *A. H. A.* (1894), 299–350 ; Chalmers, *Opinions*.

1. Study the history of charters in the Middle Ages and in modern times. Can charters be revoked or changed in the United States at present ? Trace the growth of the written constitution from the charter.

2. Is the colonial governor a reduced copy of the English King ? Prove your answer by comparing their powers, etc.

3. Compare the assemblies in the royal colonies with the House of Commons as to power before 1688 and in 1760. Did the Revolution of 1688 have the same influence upon the legislatures in England and in America ?

4. What are the advantages of a bicameral over a unicameral legislature ? Judging from the history of Europe and America, is a legislature of two houses the natural result of political evolution (cf. § 256)?

5. State what causes of dispute there were between the governors and the assemblies, and in which disputes the assemblies were successful.

6. Was the relation of the King to the colonies different in 1760 from what it was in 1620 ? of the Parliament ?

Liberty and Union (§§ 73–79)

a. On union, see Clark, *Civics*, 9–15 ; Frothingham, *Republic*, chaps. II, IV ; Fisher, *Evolution of the Constitution*, chaps. VI, VII ; Crane and Moses, *Politics*, 126–141.

1. Compare the civil, political, religious, and economic freedom of ancient Rome, Anglo-Saxon England, Massachusetts in 1650, and Virginia in 1650.

2. In what respects had the colonists more or less political liberty than the English ? Indicate fully different changes in the suffrage during the colonial period. What differences in qualifications for voting existed in 1763 ?

3. What advantages were derived by the South from slavery before 1763 ?

4. Enumerate the principal influences leading to union during the colonial period. Why did they effect the North more than the South?

CHAPTER IV

THE REVOLUTION (1763–1787)

General References

Hinsdale, *American Government*, 52–86.
Channing, *Student's History*, 152–255. The best brief account.
Channing, *The United States* (1765–1865), 41–124.
Hart, *Formation of the Union*, 42–119. A model of careful condensation.
Sloane, *French War and Revolution*, 116–388. Gives a scholarly presentation of the causes of the Revolution, though lacking in definiteness.
Walker, *Making of the Nation*, 1–19.
Green, *Short History of the English People*, 757–786. Impartial, English Liberal view.
Lecky (Washburn), *American Revolution*. The best English account. Conservative standpoint.
Trevelyan, *American Revolution*. (Part I published.)
Fiske, *American Revolution*. 2 volumes.
Fiske, *Critical Period of American History*. A narrative history of exceptional excellence.
Frothingham, *Rise of the Republic*, 158–583. Invaluable for facts.
Thorpe, *Constitutional History of the American People*, I, 1–210.
Winsor, *America*, VI–VII.
Bancroft, *United States*, II–V; VI, 1–194.
Curtis, *Constitutional History of the United States*, I, 1–230. Excellent.
McMaster, *History of the People of the United States*, I, 1–389, especially chap. I.
Larned, under *United States*.
American Statesman, lives of Samuel Adams, John Adams, Patrick Henry, George Washington, Benjamin Franklin, and Thomas Jefferson.

80. **Character of the Revolution.** — The colonial period closed with the fall of Quebec and the transfer of Canada. The "French and Indian" War brought in its train a series

of problems the solution of which greatly affected the internal government of Great Britain and her relation to the colonies she already possessed. England had just changed kings, and the new monarch was anxious to carry out a "strong" policy at home and abroad in order to increase the prestige of England, but through himself and in his own way. The attempt to solve these colonial problems which were thrust into prominence by the war with France led the King, his ministers, and his Parliament to assert their right to the exercise of certain powers over the colonies: powers which were perhaps necessary in order that they should be considered English colonies and not English states, but powers which had not been used to any appreciable extent by their predecessors. The attempt to enforce laws made for the colonies on this theory invaded what some of the colonies considered their sphere of government, this was especially true of the laws regarding taxation. This invasion aroused opposition, the opposition produced arbitrary rule which in turn led to open rebellion on the part of the colonies, and that meant political revolution.

New English policy conflicts with colonial ideas of self-government.

Cf. Mace, *Method in History*, 105–112.

81. **Effects of the Revolution.** — The *political revolution* proceeded along two lines, and the results produced were simultaneous. The first was separation from England, the second union of the colonies. The first, being negative and destructive in character, was accomplished by force much sooner than union was completed, as that called for constructive political intelligence. But the effects of the revolution were more than political. The colonies had asserted their right to self-government and had appealed to the rights of man. The inevitable consequence was that the most glaring inequalities, political and social, were doomed. The period immediately succeeding the Revolutionary War saw many of them swept away, but it took time to greatly alter the established order of things, and it was several decades before the revolution spent its force.

Union of the colonies and separation from Great Britain.

Resulting changes in society.

Channing, § 174.

Fiske, *Critical Period*, 69–87.

82. **The Situation in 1760.** — As we have already seen, the colonies had been developed separately before 1760, so that

Means of controlling the colonies.

any control over them by England was over each colony and not over the colonies as a whole. There were in theory four ways in which the King or Parliament might exercise this control: (1) by regulating the external trade of the colonies without the levying of taxes in any form; (2) by the laying of duties on goods imported by the colonies; (3) by supervision of internal government; and (4) by levying internal taxes. For reasons that are best explained by the history of England from 1630 to 1760, this control was much more lenient in practice than in theory, so that while laws were made covering the first three subjects just enumerated neither King nor Parliament had ever attempted to lay internal taxes on the Americans, and few of the laws that were enacted were ever enforced. This lack of careful administration of British laws had made the colonies content with English control, but had left the way open for a large degree of government by the people.

Possibilities of union and separation.

Scott, *Reconstruction during Civil War*, 43–63.

Story, *Commentaries*, §§ 162–182.

Apparently, at least, separation from Great Britain was a long way off in 1760, and possible union of the colonies seemed little nearer. This is all the stranger because the colonists differed from one another very little in race and general character. All spoke the same language, had much the same religion, with similar restrictions everywhere, were more or less alike even in their occupations. A common heritage of the English law, the same political institutions and ideas, the same feeling of pride in the rights of Englishmen and in the reasonableness of a large measure of self-government, all tended to make union natural and probable. The forces working against union must therefore have been very powerful, and of these two were especially important: (1) the fear that unity meant more government by England and less by themselves; (2) a feeling of localism and, to some extent, of sectionalism, which was the result of a century and a half of isolation and separate development, and which derived permanent strength from a deep-rooted belief that even if union did not increase England's control over them, it would tend to destroy the power of each colony.

83. New Colonial Policy of Great Britain (1760–1765). — That these barriers between the colonies were broken down was due to the action of Great Britain: first, by enforcing more strictly the old laws, particularly the navigation acts, made for the control of her American possessions; and second, in attempting to assert the right of Parliament to levy internal taxes. This policy seems to have been adopted by the British government for the triple purpose of paying part of the debt incurred during the late war with France, of supporting an army to protect the colonies from threatened uprisings of the French and Indians, and of increasing its own power over the colonies.

Aggressiveness of Great Britain.

As it was found practically impossible to collect the duties under the navigation acts by the means formerly employed, the collectors resorted to the use of writs of assistance, or general search warrants, which gave them the right to invade private premises and seize smuggled goods wherever found. The merchants of Boston protested against the use of the writs, and employed James Otis to defend them in a suit involving their legality. In a speech now famous, Otis claimed that the writs were an instrument of tyranny, which were unwarranted by the English constitution, and therefore in direct violation of the rights of Englishmen, to which the colonists were entitled by their charters and the laws of Parliament. The court took no action for some months, but subsequently issued writs in a few instances.

Objection to the use of writs of assistance.

Channing, §§ 115–117.

To gain still further revenue a change was made (1764) in the sugar act of 1733 by reducing the old duties, which were prohibitory, but at this date it was expected that the necessary money would be obtained from internal rather than colonial taxation.

New duties on imports.

84. The Stamp Act (1765). — This internal taxation, proposed by the British government in 1764 and enacted into law in 1765, was to be in the form of a stamp tax upon newspapers, books, deeds, wills, and other legal papers. It was similar to one that had been tried several years in England and was thought to be easily collectable. But the passage

Provisions and reception.

Hart, *Formation of the Union*, §§ 25–26.

Channing, §§ 119–124.

of the act aroused a storm from New England to the South. The agents for the collection of the tax were forced to resign before it went into effect, rioting and disorder occurred, and the whole country was as much aroused as though invaded by a foreign foe. Virginia took the lead, under Patrick Henry, in passing a Declaration of Rights, and Massachusetts followed by calling on the other colonies to take some concerted action.

The Stamp Act Congress and repeal of the act.

Channing, §§ 125–126.

Mace, *Manual of Amer. Hist.*, 145–151 (text of dec. of rights).

Larned, *Hist. for Reference*, 3190 (text).

On October 7, 1765, representatives of nine colonies met in Congress at New York and formulated a Declaration of Rights. These stated that Americans were subjects of the Crown and entitled to the rights of Englishmen; that the power of granting taxes, personally or through representatives, was one of those rights; that the colonies could not be represented in Parliament; and that "no taxes ever have been or can be constitutionally imposed on them but by their respective legislatures." This was chiefly valuable as a formulation of the colonial view that the colonies should have the exclusive right of internal taxation; but, coupled with the resistance to the Stamp Act, it led to the repeal of that law. The repeal was, however, accompanied in the declaratory act by a statement of the imperialist view that the colonies are "subordinate unto and dependent upon the Imperial Crown and Parliament of Great Britain; and that Parliament hath, and of right ought to have, full power to make laws and statutes of sufficient force and validity to bind the colonies and people of American subjects to the Crown of Great Britain in all cases whatsoever."

New forms of external taxation.

Channing, §§ 127–131.

85. **The Townshend Acts (1767).** — The union sentiment created by the opposition to the Stamp Act, and voiced in the Stamp Act Congress, might have been purely temporary but for the determination of the British government not to drop the matter. The next method of exercising control over the colonies was through external taxation, which in 1764 was admitted to be within the powers of Parliament, but which in 1767 led to non-importation and resistance. The articles subjected to duty under this new law were

imports of glass, paper, lead, painters' colors, wine, oil, and tea, but all of these duties, with the exception of that on tea, were abolished the next year.

Laws interfering with internal government of the colonies.

At the same time Parliament passed several offensive measures of doubtful legality, providing for the payment of the governors without action of the assemblies, legalizing the writs of assistance and the trials of revenue cases without juries, and suspending the New York assembly because it had failed to vote money for the troops quartered in the colony. These unjust and despotic measures called forth from the Massachusetts legislature a protest and a circular letter to the other colonies, setting forth its objections to the Townshend Acts and asking their coöperation. The British colonial secretary immediately notified the governors to dissolve the assemblies in case they accepted this invitation. And so the trouble grew. Arbitrary measures on the part of Britain caused protests from the assemblies and disorder on the part of the colonies, leading in turn to dissolution of the assemblies and attempt to overawe the populace by the presence of troops.

Formed to unite the opposition to arbitrary British government.

Fiske, *Amer. Rev.*, I, 79–81.

Frothingham, *Republic*, 261–274, 279–284.

86. The Committees of Correspondence. — The attempt on the part of England to interfere with the existing government in the most refractory of the colonies (Massachusetts) in time made it necessary for the American leaders to perfect some kind of a political organization with two ends in view: first, to continue the government they had previously used; and second, to unite the opposition to the acts of the mother country. For these reasons Samuel Adams had little difficulty in persuading the different towns of Massachusetts (1772) to select committees which should define their rights and keep in touch with similar committees in other towns. This model was adopted the next year for intercolonial committees which were established in most of the colonies. These committees could take the place of the colonial assemblies if the latter were dissolved; and, taken together, formed an intercolonial political organization of no small importance. They represented a high degree of real unity, for they not

only helped to unify public sentiment, but to render effective any action that seemed desirable.

Effect of the "intolerable acts" of 1774.

87. **The First Continental Congress.**—Matters were now going from bad to worse. This disorder in Massachusetts, culminating in the Boston Tea Party (1773), induced Parliament to pass several repressive acts (1774) aimed especially at that colony. Not only was Boston harbor closed to commerce, but a military government was appointed, and parts of the Massachusetts charter were suspended. So united had the colonies become in their opposition to England's policy that they made the cause of Massachusetts their own, believing that their liberties and governments were no longer safe from attack, so that when a call for a congress was sounded by the Massachusetts legislature, all except Georgia hastened to respond. The governors were by this time fully alive to the meaning of the movement and dissolved assemblies and forbade participation in the congress, but without effect. The people, as well as the leaders, felt that the time had come for them to act together. By legislatures, conventions, or colonial committees of correspondence, delegates were chosen to meet in Philadelphia in September, 1774.

The Declaration of Rights (1774).

Curtis, *Const'l Hist. of U. S.*, I, 6–17.

Scott, *Reconstruction*, 66–72, 401–403.

It was an able body of men that met to discuss the situation; but it was a most irregular body, lacking legal status, and claiming no legislative power. Its principal acts were the making of addresses to the people of Britain and the colonies, and the formulation of a Declaration of Rights. The latter reiterated the principles of 1765, and defined more explicitly the attitude of the colonies toward control by England. They claimed for the legislatures "free and exclusive power of legislation in all cases of taxation and internal policy subject only to the negative of their sovereign in such manner as has been heretofore used and accustomed." But they admitted that Parliament might regulate commerce for mutual benefit with no right of taxation. It was a moderate statement of the American view, and in its attempt to make reconciliation with Great Britain did not

go as far as all the leaders felt just and proper in denying to King and Parliament all means of control except by regulation of foreign commerce without revenue.

American Association.

The influence of the Congress on the development of union was greatly increased by the organization of an American Association for non-importation and resistance. All towns in the colonies were to have their branch to supervise the action of every individual in America. This was supplemented especially in New England by a military organization based upon similar principles.

Composition and powers.

Story, *Commentaries*, §§ 203, 204.

Curtis, *Const'l Hist. of U. S.*, I, 20–26.

88. Second Continental Congress. — Resistance had become rebellion before the members of the second Continental Congress assembled. This extraordinary body, the only central government for six years of war, had been called by the Congress of 1774, and was made up of members chosen by conventions of the people in the several colonies. It was different in character and in the sentiment it represented from any previous Congress, and found itself face to face with the problems of war. As the sole representative of the colonies in union it could do no less than temporarily act as the legislative and directive body of them all, since all had made common cause against Britain. As a matter of fact, it was compelled to do much more. It had hardly been in session a month before it decided that there must be an "American *continental* army," and later in the year (1775) action was taken providing for privateers and a navy. The 22d of June it dared to deal with the much mooted question of finance. An issue of paper money was ordered and national loans were authorized. It boldly took up the subject of trade the second week of its existence, prohibiting that with Great Britain and her other colonies, making that with other nations free, but shutting off the slave trade. It appointed boards to take charge of different matters and assume relations of a diplomatic nature. It advised the colonies in regard to the formation of independent state governments, and finally it declared them independent of Great Britain.

Authority.

Schouler, *United States*, I, 13.

For the exercise of all these powers of sovereignty, it possessed no real legal authority. What it had rested upon the credentials and instructions of the delegates to the Congress, the unquestioned need and otherwise absolute lack of a central organization, the hearty popular approval of and public acquiescence in the acts of the Congress.

Desire for independence but slowly formed.

Hart, *Union*, § 38.

Johnston, in Lalor, I, 743–745.

Sloane, *French War and Revolution*, 216–226.

89. History of the Declaration of Independence. — During the years from 1763 to 1776 the continued aggressions of the British government upon the asserted rights of the colonies had created an opposition to her authority which had been steadily developing from protest and remonstrance, through threatened revolt and actual revolution to the complete separation of Great Britain and America. The inevitableness of independence had been foretold by the most ardent American leaders for years, and was quite generally recognized by July, 1776. Beginning with the Mechlenburg resolutions of 1775, counties, towns, and colonies had been sending to Congress memorials asking that independence be declared. These came more especially from New England, as the Middle colonies and the far South up to the first of January, 1776, had remained loyal to England and were opposed to severing their connection with her. The growth of a spirit of independence in all sections, however, was much quickened by the appearance early in 1776 of Paine's *Common Sense*, which was widely read. During the spring of that year there were long debates in Congress on the subject, but it was decided to wait until separation was demanded by the majority of the people. In spite of the opposition of a large body of conservatives, this seemed unquestioned when Congress, on May 15, 1776, passed a resolution recommending to the colonies that they form state governments, and still less questioned when Lee introduced on June 12 a resolution stating that the colonies should be free and independent. A committee of five, composed of Thomas Jefferson, Benjamin Franklin, John Adams, Roger Sherman, and Robert R. Livingston, was at once appointed to draw up a declaration of independence, and the report of

this committee written by Jefferson was adopted by the Congress with a very few alterations upon the fourth of July, 1776.

90. Character of the Declaration. — Independence of Great Britain had been asserted because the colonies believed they had a right to govern themselves in their own way, and the mother country had not permitted them to do this. We can perhaps see most clearly why our forefathers took this stand if we examine certain parts of the Declaration. The second paragraph, for example, gives some of their views upon government. "We hold these views to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed. That whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles and organizing its powers in such form as to them shall seem most likely to effect their safety and happiness." After enumerating a long list of acts of George III which had aimed to overthrow these rights, the signers "in the name and by authority of the good people of these colonies, solemnly publish and declare, that these united colonies are, and of right ought to be, free and independent states, that they are absolved from all allegiance to the British Crown, and that all political connection between them and the State of Great Britain is, and ought to be, totally dissolved; and that, as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do."

Its principles and statements.

Cf. Tyler, M. C., in *N. A. R.*, 163 (1896), 1–16.

Cf. Channing and Hart, *Guide*, § 137.

91. Influence of the Declaration. — Of the influences exerted by the Declaration within the United States, those upon nationality and liberty are most interesting. To many of the patriots, independence declared meant independence

Effect upon nationality.

achieved. Though, in their minds, union was still necessary because of common danger, the crisis seemed to have been passed. State and local self-government were no longer threatened by the imperial government, but rather by the Congress which was exercising powers that the state governments felt belonged to them. Their first care was therefore to restrict the power of Congress as much as possible in order to strengthen the states. This was in fact the beginning of the great contest between nationality and states rights that lasted almost exactly one hundred years, but which ended in the states giving up all claim to sovereignty.

Effect upon liberty.

Channing, § 174.

The effect of the Declaration upon liberty is even more important, for the leaders of the revolutionary movement had based their claims upon the rights of man and had proclaimed equality for all. In view of the social, religious, and political inequalities existing in practically all of the states, this, if it meant anything, was full of interesting possibilities. That it did mean something is proved by the efforts made by both the revolutionary leaders and the less fortunate classes to break down these barriers — efforts that produced during the next few years radical changes which affected every state in the Confederation.

Disorder of the state governments (1775).

Hart, *Union*, § 39.

Channing, § 145.

Frothingham, *Republic*, 491–496.

92. **The First State Constitutions.** — While the colonies were collectively declaring their independence of Great Britain, the colonial governments were being replaced by separate state governments. As the war spread, the royal governors and their assistants and the judges frequently found it wise to leave the country. This left only a portion of a government in several of the colonies, in some of which the assemblies began applying to Congress to know what they should do. In July, 1775, Massachusetts had been advised to use her old charter and to disregard the governor. In the following November, New Hampshire had been urged to call a convention representing the whole people in order to frame a state constitution, which it did gladly. But it was on May 15, 1776, that Congress took the great step forward which marked a new era in the history of

independence, union, and constitutional development. They recommended to each colony that it "adopt such a government as shall in the opinion of the representatives of the people best conduce to the happiness and safety of their constituents in particular and of America in general." This suggestion was quickly followed by Virginia, which in convention adopted a constitution embodying not only a plan for the state government, but also a bill of rights. Connecticut and Rhode Island merely continued their charters which were to all intents and purposes republican constitutions, while most of the other states called conventions for the purpose, but only Massachusetts submitted the constitution framed by her convention to the people for ratification.

Congressional resolution of May 15, 1776.

Frothingham, 496–499.

The special significance of these constitutions lies in their relation to the development of the written Constitution. For the first time in history there had been adopted a real written Constitution, which was ordained by the people, was alterable only by them, and which was above the government placing limitations upon it. At the same time there was being trained in these constitutional conventions men whose experience and knowledge was to prove of the highest value in the formation of a constitution of an even higher type, the best the world has ever seen — the United States Constitution of 1787.

Significance of the written constitutions.

93. Characteristics of the State Constitutions. — These constitutions present certain marked characteristics, which were the outgrowth either of preëxisting institutions or of the movement of the times. That is, the new governments were modelled after the old colonial governments, modified by the ideas most prominent in 1776. For example, the idea of the rights of man found embodiment in "bills of rights," first introduced by Virginia, but afterward accepted by almost all the states and still a prominent part of our state constitutions. The idea that liberty could be best preserved by completely separating the departments of government, left a lasting trace on these and on all later constitutions; but the fact that the assembly had been the popular

Influence of earlier governments.

Fiske, *Critical Period*, 65–69.

Bancroft, *United States*, V, 111–125.

Desire to protect liberty.

Predominance of the legislature.

branch of the government in colonial times led the constitutional conventions to give the legislatures abnormal powers, while the governors were shorn of almost every attribute of the executive office. The veto was everywhere abolished, and was only gradually reintroduced in a modified form. The judges were made dependent upon the legislature by method of appointment, removal and payment, and their usefulness was greatly impaired. Nevertheless the constitutions were not democratic. The Revolution had made them anti-monarchical, but it did not produce at once any change in the franchise, neither did it make popular ratification of the constitution necessary.

Constitutions not democratic.

Articles of union proposed (1776).

Channing, § 167.

Story, *Commentaries*, §§ 221–228.

Curtis, *Const'l Hist.*, I, 86–97.

94. **Formation of the Confederation.** — Although the proposal to frame articles of union was made on the same day as Lee's independence motion, June 12, 1776, it was 1781 before the Confederation was formed. The fact is, however, significant that separation from Great Britain meant union of the colonies, both in the thought of the prominent statesmen and in the proposed action of Congress. A committee of one member from each state had been appointed in June, 1776, and their report, made the 12th of July, had been secretly debated for weeks. Judging from this discussion, most of the delegates were willing to give Congress as much power as it was then exercising; but when the subject was reconsidered the next year, the situation was radically different, as the states had become much more jealous of their rights, and demanded that they be fully accepted at the sacrifice of common interests. The states had their way, and a union much weaker than that suggested in 1776 was proposed in the Articles of Confederation, accepted by Congress November 15, 1777, and sent to the states for approval; yet there is no reasonable doubt that the feelings of the people of the country regarding state and national rights were well expressed in the Articles. To all, union was a necessity, but to many it was nothing more than a necessary evil. Defective as the Articles were, it is really a matter of surprise that any union could have been formed when we

Articles of Confederation accepted by Congress (1777), and adopted by all the states (1781).

consider the intense local spirit of the colonies, the extreme political narrowness that had marked so much of their conduct, and the reaction against nationalism which had set in since 1776. As it was, ratification came very slowly. By July, 1778, ten states had agreed to the Articles, and Congress urged the others to give their consent. May, 1779, saw only Maryland holding back, and she refused until her powerful neighbors should cede their claims to the Western lands, which were dangerous to her own safety. At last when action by New York and Virginia seemed to insure control of the lands by the Congress for the common benefit, Maryland gave her consent. Thus on March 1, 1781, after five weary years of effort, was union accomplished.

95. Character of the Articles of Confederation. — What was the real character of this Confederation? It called itself a league of states which retained their "sovereignty, freedom, and independence, and every power, jurisdiction, and right which is not by this Confederation expressly delegated to the United States in Congress assembled." This idea that sovereignty resided in the separate states and not in the nation is borne out by the provision that each state, whether large or small, should have one vote in Congress, and by the requirement that the Articles could be amended only by unanimous consent of the state legislatures. There were, however, restrictions placed upon the states which seemed to indicate that they were not sovereign, for no state was permitted to send ambassadors, to make treaties with other states or foreign powers, to lay duties that violated any treaty of the United States, to keep an army, or make war.

Degree of state sovereignty.

Channing, §§ 168, 169.

Fiske, *Critical Period*, 93–101.

Curtis, *Const'l Hist.*, I, 98–103.

Story, *Commentaries*, §§ 229–242.

The central government under the Confederation consisted of nothing more than a Congress of delegates elected by the states, with important diplomatic, but unimportant legislative, powers, and no executive in theory or in practice. Its judicial powers were limited to jurisdiction of appealed cases referring to interstate disputes. Its legislative powers included the right to issue money, to make

Powers of Congress.

requisitions on the states for sufficient sums to pay the expenses of the government and men enough to carry on a war, to build a navy, and finally to declare war and make peace; but for all matters of any considerable importance, the votes of nine states were absolutely necessary. As has been well said, the Articles seemed to have been formed for no other purpose than to accomplish a minimum of result with a maximum of effort. But in one respect the Confederation marks a great advance upon any preëxisting union, for it recognized the existence of interstate citizenship, and guaranteed to the citizen of one state residing in another all the rights of citizens of the latter state.

Lack of sovereign power in the United States.

Federalist, Nos. XV, XVI.

Story, *Commentaries*, §§ 248–254, 265–268.

96. **Defects of the Confederation.** — The radical defect of the Confederation was the lack of sovereign power in the United States. This showed itself in many ways. The central government could not deal with its citizens except through the states, that is, it acted on the states and not on individuals. This was the reason that Congress had the power to declare anything, but to do nothing. In the execution of the laws, in the obtaining of revenue, in raising an army, in amending the Articles, the state governments could interfere with the action of the Congress, and in some cases a single state could defeat an important measure or a proposed remedy. As it was impossible to think of coercing such a state by military force, the Congress gradually lost what power it nominally possessed. It became in time almost impossible to obtain a quorum in Congress, as the states either neglected to choose delegates, or the delegates did not think it worth while to attend. Congress had lost not only its power and its influence, but its self-respect as well.

Failure through lack of revenue.

Curtis, *Const'l Hist.*, I, 115–119.

97. **The Failure of the Confederation.** — The failure of the Confederation was due, to a certain extent, to all of these defects, but especially to the lack of power to control commerce (§ 99) and the inability to obtain revenue. While the war lasted, the United States was fortunate enough to borrow sums from France and Holland, and was also able

to raise limited amounts in the states; but, as it was not always able to pay the interest on these loans, its credit became rapidly poorer after 1783. Paper money had already been tried without success, so that the only means left Congress, in order to pay its expenses, was to apportion among the states the amounts each was to pay toward the support of Congress. As there was no way of forcing the states to pay these requisitions, and as the state finances were in themselves quite a burden, Congress waited in vain for even a small proportion of what it had requested. Of the fifteen millions asked from the states between 1781 and 1786, less than two and a half millions were paid in, whereas but one million of the ten for which Congress had petitioned between 1784 and 1788 found its way into the federal treasury.

Failure because of inability to amend the Articles.

Curtis, I, 157–167.

Two attempts were made to alter the Articles of Confederation, so as to give the central government power to regulate foreign commerce and collect for itself duties upon imports. In each case the amendment was defeated because just one state objected. The recommendation of February 3, 1781, was to the effect that Congress should have power to collect a five per cent ad valorem duty, to be used exclusively for the interest or principal of the public debt. To this all consented except little Rhode Island. A second proposition, April 30, 1784, favored a duty of five or more per cent, for twenty-five years, upon certain enumerated articles, with power to regulate commerce, the customs to be collected by federal officials. This amendment was defeated by New York, which insisted upon collecting the duties at its own ports and then paying Congress in depreciated paper currency. These experiences seemed to prove that the Articles were to remain the fundamental law of the United States until forcibly replaced by a better constitution.

Mutual interests of the people grow more numerous.

98. Development of National Conditions. — Fortunately, the degree of nationality existing in any country is not always measured by the strength of her national government. As the government became weaker, the common

interests of the people became more numerous. During the war it was a sense of common danger that held them together; but, as war conditions disappeared, and they returned to ordinary business life, the states found that they had more reason for being together than formerly. We may consider briefly three things: commerce and the public lands and religious institutions.

Uniform laws needed for foreign and interstate trade.

Curtis, *Const'l Hist.*, I, 186–195.

99. **Need of National Control of Commerce.** — As all foreign affairs were of necessity left with Congress, the regulations for commerce with other nations would be uniform throughout the country. Every part of the United States felt that it was benefited if this foreign commerce was increased, and that they were correspondingly injured by the commercial discriminations of Europe, and by the failure to make satisfactory commercial treaties. In interstate commerce they came to realize the even greater need of uniform laws. Free trade between the states had not been provided by the Articles, consequently each state levied what duties it pleased on goods brought in from its neighbors. As the interstate trade was large and growing, and as each state framed its system of duties for its own interests, the result was not only to greatly injure trade, but to produce ill feeling that led to retaliatory acts on the part of the other states. Consequently, the need of national control was so evident that, unless it could be obtained, a state of affairs bordering on warfare was inevitable.

Land cessions of the states.

Channing, §§ 170–172.

Fiske, *Critical Period*, 187–196.

100. **The Nationalizing Influences of the Public Domain.** — Much the same kind of national control was demanded for the great domain in the West that had been ceded by Great Britain in the treaty of peace (1783, § 623). Several states had claims to this land based on charters, conquests, or Indian treaties, and some of these claims conflicted. Largely owing to the attitude of Maryland, which realized the danger to herself from the further expansion of states already large, these claims were practically or wholly renounced, and the control of the land northwest of the Ohio was given to the Congress. This generous action

removed the danger of interstate strife that was present in commercial matters, and at the same time influenced the development of nationality in a very positive way, because Congress exercised over this territory without question very great powers for which it had no constitutional authority.

Ordinance of 1787.

Channing, § 173.

Fiske, *Critical Period*, 196–207.

Macdonald, *Documents*, 21–29.

Johnston, in Lalor, III, 30–34.

The Ordinance of 1787, for the government of the Northwest Territory, was what our German friends would call a *bahnbrechende Idee* — a path-breaking idea. While the territory at first was to be governed by officials appointed by Congress, and so was a kind of colony to the United States, provision was made for the formation of five states as soon as the population of any district reached sixty thousand. *These states were to be republican in character, and should be admitted to the Union on a par with all other states, and should never be separated from the United States.* Congress showed itself in sympathy with the reforming spirit of the times when it declared that there should be perfect religious liberty, that slavery should never exist in the territory, that education should be at public expense, and that estates should be shared equally by children of both sexes.

National churches formed.

Fiske, *Critical Period*, 83–87.

101. National Religious Organizations. — Before the Revolutionary War almost every colony had an established church which received support from the colony; but while each colony had church institutions these never crossed colonial lines. In other words, although there might be members of the Church of England in every colony, the church organizations were unconnected. After the war, the national sentiment of the people led to the formation of national churches. Out of the old Churches of England grew the American Episcopal Church. In 1784 the Methodists held their first national gathering, while in 1788 the Presbyterian Church of America was organized.

Abolition of restrictions and disqualifications.

102. Religious Liberty. — At the same time changes were occurring in the structure of society. None of the inequalities of the colonial period wholly withstood the undermining influence of the Revolution. In practically all

Fiske, *Critical Period*, 76–82.

of the state constitutions adopted during the war religious qualifications were required of public officials, and, in some cases, of voters, while in many cases clergymen were not allowed to hold office (Appendix G, Table I). These restrictions existed especially in the South and in New England until swept away by the democratic movement of this century, but many of them were abolished during the Confederation. In this great movement Jefferson and Madison took the lead by securing the disestablishment of the Virginia church and the abolition of church qualifications as well. The influence of the example set by the Ordinance of 1787 in this as in other reforms was of the highest importance.

Many inequalities removed.

Fiske, *Critical Period*, 70–76.

103. Class Distinctions. — The most noticeable changes in the relations of classes is that dealing with the negro slaves, but others were occurring which lightened the burdens of indented servants and did away with many of the inequalities of class legislation. The general tendency was to abolish primogeniture where that existed and substitute for it the equal partition of the property of the deceased. In the attempt to abolish the slave trade the Middle and the Southern states led the way. Emancipation had been practically completed in New England before 1787 and was making good progress in the Middle states, but gained no foothold south of Virginia.

Property still the basis of the franchise.

Thorpe, *Const'l Hist.*, I, 191–210.

104. Political Qualifications. — Considering the statement that "all men are created equal," it took a long time for people of the eighteenth century to realize that man as man had any right to a part in the government. While the requirements of colonial times were essentially modified, property remained the basis of the franchise until the close of the century. Vermont, New Hampshire, and later Kentucky did something toward making suffrage universal; but in the older states property qualifications were the rule, officials being required to have a greater amount than voters. Even the liberal ordinance for the Northwest Territory required a freehold of fifty acres before one could cast a ballot.

105. Condition of United States in 1787. — By 1787, then, much had been done, yet more remained to be done. The changes produced by the Revolution had not been radical either in their nature or in the method by which they were produced. The spirit of the Revolution was a leaven that had permeated society, not a charge of dynamite destroying existing institutions. The old system was undergoing a change; we cannot say it had been changed. There was still an absence of the nineteenth-century humanitarian spirit.

Social progress not great before 1787.

In the affairs of national government we had reached the lowest ebb. We did not command respect as a nation; other powers would make no treaties with us; our credit was gone; our commerce flourished in spite of the conditions, rather than because of them. To the general internal difficulties had been added a period of financial depression productive of cheap paper-money and a serious revolt in Massachusetts, called Shays's Rebellion. Thinking men believed that many of these evils were due to the weakness of the central government, and had already begun to take steps to have that government reorganized.

Weakness of the national government.

QUESTIONS AND REFERENCES

General (§§ 80–82)

1. What is a revolution? Show the difference between a revolution and a revolutionary war; between a social and a political revolution; a financial and a military one. Give examples of each in history. (Cf. § 36.)

2. Is it true that "a revolution is a successful rebellion"?

3. Who began the American Revolution? To what extent was the Revolution due to social, to political, to economic causes?

4. What is meant by nationality? by the spirit of nationality? Can nationality exist without national political institutions? without national religious institutions? Can it continue without these?

5. What is the difference between localism and sectionalism? Which is more opposed to nationality? Under what conditions might each help to develop nationality? under what to hinder it?

6. What was the influence of the Revolution upon English politics? Did it produce changes that resulted in political freedom?

7. Trace, if possible, the influence of our Revolution upon that of France. Compare them as to causes, character, relation to the rest of the world, and results, noting principal similarities and differences. Account for these.

England in 1760

a. On the character and policy of George III compare Fiske, Green, Trevelyan, Lecky, Walgrave in Hart's *Contemporaries*, II.

b. For the character and composition of Parliament see Fiske, I, 32–35; Green, 764–766; Lecky, 185–188.

c. The difference between "virtual" and "territorial" representation is given in Channing, *Student's History*, §§ 122–123.

1. Describe the condition of English politics under George II. In what respects was the English policy of George III different from that of George II? in what the colonial policy?

2. From what kinds of districts were the members of the House of Commons elected? What influence did the Lords have over these elections? To what extent was the House of Commons controlled through bribery?

3. What difference was there between the English and the American idea of representation in 1760?

The Beginnings of Conflict (§§ 83–85)

a. On the colonies in 1760, see Montgomery, *Student's American History*, 143–162; Channing, *United States* (1765–1865), chap. I; Thwaites, *Colonies*, chaps. V, VIII, X; Lodge, *English Colonies;* Channing and Hart, *Guide*, § 133.

1. What claim had the colonies to the exclusive right of taxation based upon the charters? upon the expressed consent of the British government? upon the implied consent? upon the results of the contests between the governors and the assemblies?

2. Is taxation without representation always tyranny? If not always, when is it, and when not? Have we any instances now of taxation without representation?

3. What provisions of the Townshend Acts violated American principles of government, and in what ways?

Intercolonial Union (§§ 86–88)

1. Did the spirit of union precede organized union? Was the spirit of union ever fully represented by the character of the organiza-

tion? Which was of greater value to unity, a congress or organizations like the committees of correspondence? Why?

2. Compare the Congresses of 1754, 1765, and 1774, as to reasons for which called, number of colonies represented, method of choosing delegates, degree of unity shown, work of the Congress, and influence on permanent union. Make table.

3. Compare the Declarations of Rights (1765 and 1774) and the Declaration of Independence, showing basis of claims, deductions from these premises, and the growth of the idea of complete self-government.

Union and Independence during the War (§§ 89–93)

a. On first state constitutions consult Fisher, *Evolution of Constitution*, 70–89; Schouler, *Constitutional Studies*, 29–69; Thorpe, *Constitutional History*, I, 60–100; Morey in *A. A. A.*, IV, 201–232; Poore's *Charters and Constitutions;* Channing and Hart, *Guide*, § 143; W. C. Webster in *A. A. A.*, IX (1897), 380–420.

1. Was independence inevitable? In what section was opposition to the Declaration most prominent, and why? What effect did the Declaration have on parties in the United States? on our standing abroad?

2. Make a study of the Declaration. Do you find any ground for the misquotation that "all men are created free and equal"? What do you think of the bases of the argument in paragraph 2? of the argument itself?

3. Of the reasons assigned for separation, which ones deal with acts illegal in English law? which ones were opposed to colonial practice?

4. Was democracy, as we understand it, the natural consequence of the Declaration? Trace the influence of the Declaration in equalizing conditions since 1776.

5. Considering the action of Congress in the formation of state governments, could the states justly claim to have been sovereign at any time?

6. Show how the revolutionary state constitutions illustrate the truth that lies in the natural theory of the origin of the State. In the contract theory (§§ 6, 7).

The Confederation (§§ 94–105)

1. Compare the Articles with Franklin's plans of union in 1754 and 1775 and the second Continental Congress as to form of government, representation of states, and powers of Congress.

2. Is it true that the Confederation really represented a higher form of union than Congress in 1776? Give your reasons in full.

3. Enumerate specific defects of the Confederation.

4. What influence did separation from Great Britain after 1776 have upon the development of national conditions? What part has commerce played in the centralization of states and governments in history?

5. To what extent did the United States allow its public domain to be self-governing? In what ways has our national territory been held in a colonial relation to the central government? (see § 628).

6. In what ways did the Ordinance of 1787 reflect the reforming movement of the times, and how did its provisions in turn influence the West? the East?

7. For what reason did the new laws of inheritance favor the development of democracy?

CHAPTER V

THE CONSTITUTION (1787–1789)

General References

Hart, *Formation of the Union*, 120–135.
Channing, *Student's History*, 255–275.
Walker, *Making of the Nation*, 19–62.
Hinsdale, *American Government*, 87–143. An excellent summary.
Johnston, in Lalor's *Cyclopedia* under Constitution, Compromises, State Sovereignty, etc.
Fiske, *Critical Period*, 220–344.
Curtis, *Constitutional History*, I, 235–697.
Bancroft, *History of the United States*, VI, 195–474.
Madison, *Debates in the Federal Convention*. By far the best contemporary account. (Volume V of Elliott's *Debates*.)
Hamilton, Madison, and Jay. *The Federalist*. The best contemporary explanation of the completed constitution.
Elliott, *Debates*. 5 volumes. Gives journal of the convention and speeches on ratification in the states.
Meigs, *Growth of the Constitution*. Traces the development of each section to its final form.
Jamieson, *et al.* *Essays in the Constitutional History of the United States*.
For further bibliographies consult:
Channing and Hart, *Guide*, §§ 154–157.
Ford, in Bancroft, *History of the Constitution*, II.
Foster, *References on the Constitution*.

106. Feeling regarding a Constitutional Convention. — The need of a constitutional convention to remedy the Articles of Confederation had been recognized before those articles went into operation. As early as 1780 Paine and Hamilton had suggested such a convention, and in 1785 Bowdoin, governor of Massachusetts, definitely instructed her representatives in Congress to have one called. The serious defects of the Confederation had been emphasized

Favored by a few before 1787.

Fiske, *Critical Period*, 214–222.

Curtis, *Const'l Hist.*, I, 221–232.

by Peletiah and Noah Webster in 1780, and were realized by all the leading men of the country; but the desire for a convention to remedy these defects were not widespread. It was necessary for a few earnest spirits to take advantage of conditions by summoning a convention representing all the states. The favorable opportunity arrived when Madison persuaded the Virginia legislature to invite all the other states to attend the Annapolis conference held by Maryland and Virginia for the purpose of regulating commercial interests. The subject proposed for discussion was the condition of commerce and trade throughout the Union. As delegates from but five states were present, Hamilton urged an adjournment in order that all the states might be represented in a larger convention at Philadelphia the next year. The Annapolis delegates then accepted the draft of a circular letter to the states for a convention "to revise such further provisions as shall appear to them necessary to render the constitution of the federal government adequate to the exigencies of the Union, and to report to Congress such an act as, when agreed to by them, and confirmed by the legislatures of every state, would effectually provide for the same."

The Annapolis conference.

Hinsdale, §§ 166–168.

Curtis, I, 232–236.

107. The Purpose of the Convention. — Congress resented the action of the Annapolis Convention in calling a constitutional convention, and refused to give its consent to the Philadelphia meeting, but in February, 1787, after seven states had appointed delegates, and New York had taken away the last hope of regular amendment of the Articles by refusing to vote the impost, the absolute need of such an assembly became apparent, and Congress gave its indorsement by calling a convention of its own to meet at Philadelphia at the same time. This was summoned "for the sole and express purpose of revising the Articles of Confederation and reporting to Congress and the several state legislatures such alterations and provisions, therein, as shall, when agreed to by Congress and confirmed by the States, render the Federal Constitution adequate to the exigencies

To revise the Articles of Confederation.

Curtis, I, 237–245.

of government and the preservation of the Union." As each state instructed its delegates in substantially the same terms, the convention was technically limited to revising the Articles of Confederation. If it failed to do this, it was left one of two alternatives, — to form a new and stronger confederation, or a still stronger government on a different basis.

Prominent delegates from the different states.

Walker, *Nation*, 22–29.

108. The Members. — The *personnel* of the convention was of a very high order. This was unquestionably the ablest body of men that had ever sat to discuss the political affairs of America. Strangely and yet naturally enough the most intense leaders of the pre-revolutionary period were not there. Some, like Henry and Lee, had refused to serve as delegates; while others, like Jefferson, were occupied with foreign affairs. On the whole, the absences cannot be regretted, for most of these men were little suited to the work of making a Constitution for a nation. But the members of the convention were by no means unknown men. Franklin, the ablest statesman of the previous generation, though now in his decline, rendered invaluable aid in preserving a spirit of harmony, and with the noble-minded Washington did much to give the Convention prestige with the people. Sherman, of Connecticut, had been on the committee that wrote the Declaration of Independence, and like his colleague, Ellsworth, was a man of excellent judgment. Massachusetts sent four men of prominence. Hamilton, of New York, was in many ways the ablest man present, but contributed little to the details of the final plan because his ideas of central government were out of sympathy with any that could be used, and his vote was cancelled by those of two very narrow-minded men. From Virginia and Pennsylvania came the men whose influence was from first to last the greatest. The scholarly Madison, with his broad knowledge of historical institutions and his deep insight into the evils of the time, was ably supported by Wilson, the clear-thinking Scotchman, who possessed ideas that remind us of the America of to-day more than of America in 1787. From Pennsylvania came also the quick-tempered but able Gouverneur Morris, to whom was assigned the task of making the final draft of Constitution, while the South sent Rutledge and the two Pinckneys.

Organization and sessions.

109. The Question of Nationalism. — The Convention was called to order at Philadelphia on the 25th of May, 1787, with delegates from nine states present. It closed its sessions on the 17th of September, every state but Rhode Island having been represented during most of that time.

Of the sixty-two delegates appointed, only fifty-five reported and but thirty-nine signed the final draft.

The Virginia plan.

Elliott, *Debates*, V, 127–128.

Fiske, *Critical Period*, 236–242.

The first business was the selection of a chairman, George Washington, and the making of rules, of which the two most important were that sessions should be secret and that each state should have one vote. On the fifth day Randolph, of Virginia, offered a plan drawn up by Madison and approved by the delegates from that state. It is popularly called the Virginia plan. As stated in the first article, its object was to correct and enlarge the Articles of Confederation. For this purpose there was to be *national government*, composed of a legislature, executive, and judiciary. The legislature was bicameral, the lower house being elected by the people, and the upper house chosen by the lower out of persons nominated by the state legislatures. This national legislature was to have not only the legislative rights of the existing Congress, but "moreover to legislate in all cases to which the separate states are incompetent, or in which the harmony of the Union may be interrupted by the exercise of individual legislation, to *negative all laws passed by the several states contravening*, in the opinion of the National Legislature, *the Articles of Union*, or any treaty subsisting under the authority of the Union, and to call forth the force of the Union against any member of the Union failing to do its duty under the articles thereof." There was to be a competent executive elected by the national legislature, which was not reëligible, and which, with a certain number of judges, should have a suspensory veto upon laws of the national and state legislatures. A judiciary was to be established with jurisdiction in cases of interstate dispute, piracy, impeachment, etc. Provision was made for the admission of new states, for guaranteeing representative government to each state, and for all state officers to take an oath to support the Articles of Union. The Constitution was to be ratified by conventions in the several states, and to be amended without the necessary assent of the national legislature.

We can see at a glance how different this plan was from the Articles in use. Although not instituting what we should call a really popular government, it certainly was national. The negative upon state laws and the legal use of force to coerce a state seem indeed to threaten local self-government; but these features were dropped at once for lack of support. It suggested what is on the whole a reasonable scheme — one in fact that with modifications we have put into practice.

Comparison with the Articles of Confederation.

110. **The Contest over Nationalism.** — The next day, May 30, in the committee of the whole, it was moved that a Confederation based on treaties between sovereignties was insufficient, and moved further "that a *National* government ought to be established with a *supreme* Legislative, Executive and Judiciary." The second part of the motion was adopted by a vote of six to one. This was certainly not equivocal, though later discussion showed that some members did not fully understand what was meant by the word *national*. During the next two weeks the debate (still in committee of the whole) was limited to the different resolutions of the Virginia plan, and at the end of that time the Virginia plan was accepted by the committee with some alterations, such as dropping the clauses referring to the negative on state laws, to coercion, and the one providing for a council of revision, and modifying certain of the details. This called forth from the conservatives and delegates from the small states a scheme known as the *New Jersey Plan*. It favored amendment of the Articles of Confederation so as to create an executive elected by Congress, and a judiciary, with appellate jurisdiction, appointed by the executive. Congress was given power to levy duties and internal taxes, and its legislation, together with the treaties, was made the supreme law of the land. Provision was made for the admission of new states, and for a uniform rule of naturalization.

Virginia plan adopted in committee of the whole.

Johnston, in Lalor, I, 547–548.

Fiske, *Critical Period*, 242–244.

The New Jersey Plan.

Fiske, 245.

With this greatly improved scheme of confederation before it, issue between nationalism and particularism was fairly

Virginia reported by committee of the whole.

Fiske, 246–250.

joined in the convention. On June 19 the members, still in committee of the whole, voted to rise and report the Virginia plan. The vote stood seven to three — in some respects a division between large and small states. At all events, it was a decisive victory for the national party. But the same day, in order to avoid bad feeling, the word *national* was dropped, and the legislature was hereafter called Congress.

Necessity of compromise.

Later on the plan was modified by introducing the federal principle in the composition of the Senate, and still later other federal features were embodied. It was absolutely necessary that this should be done, for although the states favoring nationalism had been in the majority and had carried their point, and could probably have won in the contest over representation in the Senate, the victories would have been dearly bought, since, even had the Convention failed to break up, which is unlikely, the Constitution would never have been adopted by the people.

Representation considered in committee of the whole.

111. **The Compromise over Representation in Congress.** — It had been decided the first week the convention was in session that the members of the lower house should be elected by the people of the states, and later it was agreed that their number should be in proportion to the free population and three-fifths of all others. At this time a motion to have equal representation in the Senate was lost by a vote of five to six, and the large states then adopted the same rule for the Senate as for the House of Representatives.

Connecticut compromise.

Fiske, 250–253.

As this was done in the committee of the whole, nothing was said. It was an entirely different matter, however, when the subject was taken up in the convention, June 28. They decided that the states should not be equally represented in the lower house, but could do nothing more, so referred the matter to a committee. The committee favored equal representation in the Senate, giving the House power to originate all money bills. This was not at all satisfactory to the large states, for they considered the financial right of little value. Day after day of bitter debate was passed without solving

the difficulty. The small states were determined to win or withdraw, and the large states finally accepted defeat as the lesser evil. It was then decided to allow the states to be represented in the House according to population, rating negroes at three-fifths of their number, and to give each state two members, each having a vote, in the Senate. This concession won for the Constitution both during the convention and afterward the complete support of the small states, and left the chief issue of the Convention the question of slavery.

The adjustment of state and sectional interests.

112. Other Questions and Compromises. — The conduct of the small states had been directed by the feeling that "self-preservation is the first law of nature," and there is no doubt that they believed consolidation of the Union to be a real danger to them. In later discussions, the chief difficulties lay in devising a scheme that would promote as many sectional interests as possible. As the advantage of one section was often thought to be the disadvantage of another, and as each section threatened to withdraw unless its demands were recognized, the only possible union lay through further compromise.

In addition were the numerous details which involved no great principle, but whose proper adjustment meant so much to the administrative success or failure of the new Constitution.

The counting of negroes.

Fiske, 256–262.

113. The Three-fifths Compromise. — It had been decided early in the convention that when representatives in the lower house were apportioned among the states or when direct taxes were levied upon them, the number of members or the amount of the tax should be in proportion to the population. A difficulty at once arose as to the counting of negroes. The South wished slaves counted when representatives were apportioned, while the North protested. The South objected to counting the negroes, whom they now said were property, when taxes were being assessed, while the North thought they should be counted. It seemed then about an even thing when the convention adopted the rule

in use for taxes under the Confederation by taking all of the free population and three-fifths of the negro slaves as the basis in both cases, but it does not require a great knowledge of our later history to know which side had the best of the compromise.

Report of the committee on detail.

Elliott, *Debates*, V, 376–381.

114. The Last Great Compromise. — On the 26th of July the Convention completed the discussion of the Virginia plan and placed its resolutions in the hands of a committee on detail for further elaboration. Several days later the committee reported a plan very similar in form and content to our present Constitution proper. Among the notable differences were the failure to give the courts jurisdiction over cases arising under the treaties and the Constitution, the power granted the Senate to decide certain controversies between States and two powers of Congress. In this draft Congress was not permitted to prohibit the slave trade, and navigation acts could be passed only by a two-thirds vote. The last two were clearly dictated by Southern interests and met with considerable opposition. They were at once given to a new committee and the report favored prohibition of the slave trade after 1800, with a tax on slaves imported, and struck out the clause requiring a two-thirds vote for navigation laws. This came near precipitating a conflict between the Southern and New England interests, which were diametrically opposed to each other on the two questions. They finally agreed to have navigation acts passed by a majority vote, to prohibit the slave trade after 1800 (later changed to 1808), and to limit the tax on slaves to ten dollars per head. The power of the Senate over controversies had already been struck out, and the jurisdiction of the courts was enlarged soon after.

Compromise over slave trade and navigation.

Fiske, 262–267.

Method of electing Senators.

Meigs, *Growth of Const.*, 68–80.

115. Important Details. — On a number of subjects beside those mentioned, the convention was long in doubt. They could not at once make up their minds as to the best method of choosing Senators. Some wanted election by the people, others election from special districts, a third class wished to leave the choice with the lower house, while a fourth favored

the state legislatures. As the last were the most numerous, their views finally prevailed.

Much more trouble was encountered with the Presidency. Most of the members favored a single person because the committees of the Confederation had been so unsatisfactory; but in regard to election, reëligibility, and length of term, the convention did not know its own mind. They first voted in favor of a term of seven years without reëlection, then changed to six, went back to seven, and during the closing weeks of the sessions decided upon four, with reëligibility. The election of the President presented a much more difficult problem. They were afraid to make him subordinate to Congress by leaving the choice to that body, did not dare intrust election to the people, and were unwilling to leave it to the state legislatures. After agreeing to two of these plans at different times, they finally hit upon indirect election through competent electors chosen by the States.

Term and election of the President.

Stanwood, *Hist. of Presidency*. 1–9.

Bancroft, *United States*, VI, 326–347.

Fiske, 277–285.

116. The Method of Amendment. — The two most important things with regard to any constitution are how it is made and how it may be changed. After it has been adopted, the method of amendment is of the greatest consequence, because that determines whether the constitution shall be altered to meet new political conditions, or whether it shall be abolished by revolution. The failure of the Confederation was in no small measure due to the requirement of unanimous consent to any change. The opposition in the convention to such a rule was practically unanimous, but the framing of a proper method was not given the attention it deserved. Debate was confined principally to the question whether the states should have any initiative in making alterations. It was finally agreed that amendments might be proposed by two-thirds of each house of Congress or by a convention called on the application of two-thirds of the states, and that for ratification the consent of three-fourths of the state legislatures or conventions was necessary. Only one permanent clause was to be free from alteration by this

A more liberal rule adopted.

Meigs, *ibid.*, 272–277.

means: no state should be deprived of its equal representation in the Senate without its consent.

Lack of care in subjects not in dispute.

The comparative lack of consideration with which this subject was treated was paralleled in the case of several others, which in themselves deserved the most careful attention. A careful reading of the proceedings of the convention cannot fail to leave the impression that too much attention was given to making a constitution that would be adopted, and not enough to perfecting those parts upon which opinions differed very little. Yet when we consider the seriousness of the situation in its many trying aspects, the lack of experience in framing national constitutions, we are just as much impressed with the moral earnestness, the lofty patriotism, and the rare political skill with which "the Fathers" sought to give us the best government they were able to devise.

Objections to the Constitution.

Hinsdale, §§ 206–208.

Story, *Commentaries*, §§ 293–305.

117. Conditions affecting Ratification. — The Constitution was to go into effect as soon as nine states had ratified through conventions of the people, but there were great difficulties to be overcome before the states would agree to the new plan. Bad as the government under the Confederation had been, popular prejudice was probably greater toward a strong than toward an inefficient government. The new instrument seemed to invade the sphere of the states, to reëstablish tyranny. It provided for no bill of the rights of the people, it made Congress absolute in the control of certain affairs, it left the Supreme Court and not the states to decide whether Congress had overstepped its bounds. It created a military dictator with almost unlimited power.

Conditions favorable to ratification.

Curtis, *Const'l Hist.*, 623–640.

On the other hand, many things were favorable to the Constitution. The best classes of the citizens were disgusted with the Confederation, and these classes included most of the political leaders. The Federalists or friends of the Constitution were much better organized than their opponents. They possessed greater knowledge and skill, and were able to show the people that their fears were based on prejudice. This is nowhere better exemplified than in the able papers written by Hamilton, Madison, and Jay, pub-

lished under the title of *The Federalist*. Nevertheless it is true that the Constitution was drawn "by grinding necessity from a reluctant people."

118. The First States. — It was the small states that led the way in ratification. Delaware came first on the 6th of December, 1787, with a unanimous vote. Pennsylvania won after a hard struggle in which the superior organization of the Federalists and the logic of Wilson were the determining factors. New Jersey, Georgia, and Connecticut fell into line without much opposition; but in North Carolina, and later in New Hampshire, the conventions adjourned without action.

Five states during December and January.

Fiske, 306–317.

As Massachusetts was the stronghold of particularism, the Anti-federalists made a serious attempt to keep the state from ratifying. The three great objections brought forward were that the liberties of the people were threatened (1) by the length of the terms of representatives especially, (2) by the absence of a bill of rights, and (3) by the general consolidation of power in the United States government. The convention would not vote for ratification until it was understood that a bill of rights should be added, and then the majority was only nineteen out of a total of over three hundred. Following this Federalist victory, came the approval of Maryland, South Carolina, and New Hampshire, so that the nine states legally necessary had been secured.

Massachusetts.

Walker, *Nation*, 55–57.

Fiske, 317–331.

The ninth state.

119. The Later States. — It cannot be said that the troubles of the Federalists were over yet, for Virginia was the most populous state, and New York, though small, was commercially important. The Anti-federalists in the former were led by ardent Patrick Henry, who made every effort to form a Southern confederacy. His attacks in the convention were directed largely toward the absolutism of the President and the absence of a bill of rights. As he proved no match for Madison aided by John Marshall, the state, by a vote of eighty-nine to seventy-nine, decided to cast in its lot with the new Union.

Virginia.

Fiske, 334–338.

In New York the opposition was ably organized by Governor Clinton and still more ably conducted by Malancthon

New York.

Fiske, 340–344.
Lodge, *Hamilton*, 70–80.

Smith. But for the genius of Hamilton, the Anti-federalist majority could not have been overcome; yet the fact that he made a convert of his chief adversary is sufficient proof of the ability with which he defended the principles of the Constitution. Even then the state was carried by the narrow margin of two votes.

The non-ratifying states.
Johnston, in Lalor, III, 788.

North Carolina and Rhode Island were still outside the Union and saw fit to remain so, the former until late in 1789, the latter until May, 1790. As the Congress of the Confederation practically expired in October, 1788, and as the new central government went into operation in the spring of 1789, it has always been an interesting question as to the status of these two states which sought to refrain from any part in the great political Revolution of 1787.

Adoption of the amendments.
Schouler, *United States*, (1st ed.), I, 102–104.

120. **The First Ten Amendments.** — Massachusetts was not the only state that feared to adopt the Constitution without a bill of rights to protect individuals from the new central government. So strong was the feeling in favor of adding some constitutional guarantees that the citizens should not be arbitrarily treated that ratification in several of the conventions had only been secured by promising that the first Congress should submit a bill of rights to the different states. This was accordingly done, and ten of these amendments were adopted by three-fourths of the states and declared to be a part of the Constitution December 15, 1791.

The Constitution recognized the existence of a state "partly federal and partly national."
Federalist, No. 39.

121. **The Federal State.** — The constitutional convention clearly recognized the fact that the United States was not really a league as the Articles of Confederation declared, but was much more united. They also saw that to create a centralized national government would be impossible, and so adopted the compromise system which moderate men spoke of as "partly national and partly federal [confederated]." They did not realize that the kind of a state which really existed was a Federal State, but they nevertheless distributed the powers of government between the central and the state governments in such a way that each was

given those duties it could best perform. In other words, while the *idea* of a Federal State was not clear to them, *the method of government* necessary for such a state was fairly well appreciated.

The value of a grant of general powers.

122. **The Central Government and the Constitution in 1787 and since.** — Fortunately the boundary which separated the state sphere from the national sphere was so placed that all subjects properly belonging to the central government under conditions at all like those of 1787 were granted to it, while everything else was left to the states. That the national sphere was not limited as much as the people would have wished, was due to the reaction against the weakness of the Confederate Congress and the breadth of view of the leaders in the Convention. That the powers delegated to the national government now are nominally the same as those delegated one hundred years ago, is due still more to the fact that those powers were granted in general and liberal terms, and that the interpretation of the Constitution by the different departments of government, especially the Supreme Court, has given these powers a broader scope than was first intended. Were it not for this, our unwritten Constitution could not have supplemented the written Constitution so as to give the central government the power it has come to need as the national feeling of the people has grown stronger, and the written Constitution must have long ago been supplanted by a new instrument better suited to the conditions.

The political ideal of "the Fathers."

123. **A Government of Checks and Balances.** — The eighteenth-century ideal of good government was one of checks and balances. This was undoubtedly due to the belief of the people that individual liberty should be the prime object of government. Most governments had been so oppressive that all governments except those under the immediate supervision of the people, as, *e.g.* in the town meetings, were looked upon with distrust, almost as a necessary evil. In order therefore to keep the government from harming the individual, an attempt was made to separate the legislative, executive, and judicial departments with the intention of

balancing them against each other, and making them serve as checks upon one another. It was customary, however, to give the executive some legislative power, as the veto, in order to act as a further check upon the legislature, while the legislature could interfere in the execution of the laws in various ways. The central government created by the Constitution of 1787 was the nearest approach to this eighteenth-century ideal that ever existed. John Adams has enumerated in a famous letter (1814) the principal checks and balances at the time the new government was inaugurated.

John Adams's enumeration of balances.

Adams, *Works*, VI, 466–468.

"Is there a constitution on record more complicated with balances than ours? In the first place, eighteen states and some territories are balanced against the national government. . . . In the second place, the House of Representatives is balanced against the Senate and the Senate against the House. In the third place, the executive authority is in some degree balanced against the legislature. In the fourth place, the judiciary power is balanced against the House, the Senate, the executive power and the state governments. In the fifth place, the Senate is balanced against the president in all appointments to office and in all treaties. This, in my opinion, is not merely a useless but a very pernicious balance. In the sixth place, the people hold in their own hands the balance against their own representatives by biennial which I wish had been annual elections. In the seventh place, the legislatures of the several states are balanced against the Senate by sextennial elections. In the eighth place, the electors are balanced against the people in the choice of the president. And here is a complication and refinement of balances which for anything I recollect is an invention of our own and peculiar to us."

The two views.

Story, *Commentaries*, §§ 306–372.

124. Theories concerning the Constitution. — If the political leaders of the last century did not fully apprehend the idea of a Federal State, we certainly could not expect the people to do so. As a consequence, the new Constitution had barely been completed before one set of persons wished to consider it as a compact between the states who still retained their sovereignty and who had united to form a central government but not a central State. A second set believed that the United States was more than a league, and that it was the people of the United States who were sover-

eign. These two views furnish the clew to the interpretation of our early history, the advocates of each view struggling for supremacy.

125. Compact Theory. — While the views were not distinctly formulated at first, there is little doubt that during the early years of the Constitution most of the people would have been adherents of the compact theory. To them the states were much more real that the United States, and if they had been obliged to locate sovereignty in one or the other, with little hesitation it would have been given to the states. This view was strengthened by the claim of the states to sovereignty under the Confederation, by the strong spirit of particularism existing everywhere, by the fact that no state was bound to the new system till it gave its own consent, that the United States was apparently a creation of the states, that in ratification some of the states had claimed the right to withdraw their consent if they felt the central government exceeded its powers, and finally that there was little opposition to the tenth amendment which many construed as a recognition of state sovereignty.

Hold of the compact theory on the people.

Lodge, *Webster*, 174–181.

126. National Theory. — The national theory did not find as wide popular acceptance at the first, though it was the view of the Constitution taken by many of the leaders from the beginning. As the spirit of nationality grew stronger, it gained adherents everywhere, especially among the party that controlled the central government. Its advocates claimed that the Union existed as early as any of the states, that the states never had exercised all the powers of sovereignty even under the Confederation, that ratification by states did not prove state sovereignty, for ratification was not entirely voluntary, and in the case of Rhode Island and North Carolina, not at all so ; and that a change in the Constitution, completely altering the sphere of the states, might take place without any one so-called sovereign state.

Basis of the theory.

Story, *Commentaries*, §§ 207–217.

Johnston, in Lalor, III, 788–797.

127. The Preamble. — The basis and purposes of the new Constitution were set forth in the preamble. We notice immediately the great difference between this paragraph

Comparison with the Articles.

and the statements of the Articles of Confederation covering the same subjects. It was no longer a "firm league of friendship," but a union with a constitution ordained by the "people of the United States," that phrase which was to be the bone of contention for nearly a century of bitter controversy. The objects stated are more positive in character as well as more numerous than those of the Articles, so that the different spirit which the document breathes is apparent from the very beginning.

Organization and powers of the Senate.

Schouler, *Constitutional Studies*, 104–113.

128. **The Congress: the Senate.** — The legislative department under the new system was to consist of two houses essentially different in composition but practically alike in powers. The upper house or Senate was usually spoken of as federal, for in it each state had two members, and no state was to be deprived of representation without its own consent. But as each member had a vote, was not bound by instructions of the state legislature and could not be recalled, the senator was a very different person from the state delegate to the Confederate Congress. Senators had to be at least thirty years of age, an inhabitant of the state which they represented, and nine years a citizen of the United States. They were to be chosen by the state legislature for a term of six years, one-third retiring every second year. Like all others connected with the United States government, they were compensated from the national treasury. As the Senate was a small body, it was believed to be more dignified than the House, and especially suited to transact the special business left to it. It could give or withhold its consent to the more important appointments made by the President, could ratify treaties by a two-thirds vote, sat as a court for the trial of impeachment cases, but could convict only when two-thirds favored such action; and, in case the Vice-president was not elected by the "college," it was to choose one from the two highest.

Organization and powers of the House.

129. **House of Representatives.** — The House was constituted on what was then called the national principle, *i.e.* the number of members was in proportion to population,

but each state had at least one member. In order to learn the exact population a census was to be taken every ten years, and the members to be apportioned according to the number of free inhabitants and three-fifths of all others. Persons could not be chosen representatives unless they were twenty-five years of age, had been citizens of the United States seven years, and were at that time inhabitants of the state. In the election of representatives there was no attempt to make the franchise national; but those who voted for members of the lower house of the legislature in the different states might also vote for members of Congress. As the House was the more popular branch of Congress, it was given sole power to originate money bills; and when the electors failed to choose a president, the members voting by states were to select one from the five (afterward three) highest on the list. Following the custom in England and America, the House had exclusive power of impeachment.

130. Powers of Congress. — Unlike the powers exercised by the state legislatures, those of Congress were *enumerated*, though in general terms. Several points are worthy of attention. First of all, the new government was to be practically independent, as Congress had full power to borrow money and to levy duties and other taxes, with the one limitation that all direct taxes should be in proportion to population. In the exercise of its other powers as well, Congress legislated not for the states, but for individuals with whom the central government came into direct contact. It had power over interstate commerce, over uniform laws of naturalization, over post-offices, patents, and copyright. In military matters it could not only declare war, but could raise an army and create a navy of its own, and control the militia in case of need. Over foreign affairs it had exclusive power, as the states were forbidden to send or receive ambassadors or make treaties and alliances. All territory belonging to the United States was subject to the control of Congress, and it alone could admit new states. Most important of all, it was vested with power "to make all laws necessary

General.

Schouler, *Constitutional Studies*, 115–147.

Financial.

Commercial.

Military.

Foreign affairs.

Territorial.

The "elastic clause."

and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, in any department or officer thereof." This has frequently been called the "elastic clause."

Separation of the departments.

Hinsdale, §§ 245, 246.

131. The Executive. — The effort was made to keep the departments separate by making them in no ways responsible to each other. Congress had nothing to do with the choice of the President, and it could not control his action except through impeachment. The judges were appointed by the executive, with the consent of the Senate; but they also were removable only by impeachment.

President's powers.

Schouler, *Constitutional Studies*, 156–168.

In the President was vested the whole executive power. This included power to execute the laws, to command the army and navy, to appoint all important officials, to grant pardons and make treaties, with the concurrence of two-thirds of the Senate, and to attend to all administrative matters. He was to represent the whole United States, and not districts or states, like members of Congress. He was to be chosen by electors, who were selected by the states and were as numerous as the senators and representatives from each state. These electors were to be the most prominent men of the state, and were to use their own judgment in the selection of President and Vice-president. No one, however, was eligible to the office of President or Vice-president unless he was a native born citizen or a naturalized citizen in 1788, at least thirty-five years of age, and fourteen years a resident of the United States. In the performance of his duties, the President was to be aided by officials merely mentioned in the Constitution as heads of departments; but these men were nothing more than the servants of the President.

Election.

Organization and jurisdiction.

132. The Judiciary. — The national judiciary was established for the trial of those cases, not numerous but important, that could not from their very nature be properly decided by state tribunals. According to the Constitution, there was to be a Supreme Court and such inferior courts

as Congress should establish. All judges were to be appointed for good behavior by the President, with the consent of the Senate. The courts were to have jurisdiction in all cases arising under the Constitution, the treaties, or national laws, in cases affecting our representatives abroad, or dealing with admiralty and maritime jurisdiction. All cases where a state was a party, or between citizens of different states, or between a foreigner and a citizen, were to be tried in these courts.

Schouler, *Constitutional Studies*, 169-177.

133. **The Nation and the States.** — In the system recognized by the Constitution the nation and the states were very closely related. The two together formed a whole — each by itself an incomplete part. While they had concurrent powers over certain subjects, as a rule the powers were mutually exclusive. The separation of the state and national spheres was accomplished by delegating certain powers to the United States government, and prohibiting some of those and some others to the states. Within its own sphere each was supreme ; but in case they overlapped and the two came into conflict, precedence was given to the United States by virtue of the provision that the Constitution, the national laws made in agreement with the same, and the treaties should be the supreme law of the land. The dependence of the nation on the states is shown not only in the need of state law to supplement national law, but in the method of election of many of its officials. By refusal to enact certain necessary laws the states might interfere with, or even prevent the election of senators, representatives, and presidential electors. Since almost no instances of such actions have occurred, it is quite apparent that the states believed they would be the ones injured by an attempt of that kind.

Relation of the two.

Compare Hinsdale, §§ 225–231.

Bryce, 233–242.

134. **Prohibitions on the States.** — Among the things prohibited to the states were the making of treaties and alliances with other states and foreign powers. The states were not allowed to coin money, make paper money, or allow paper to be used as legal tender, or pass any law impairing the obligation of contracts. The war powers were

Schouler, *Constitutional Studies*, 148–155.

expressly limited to repelling invasions; and they could levy duties only with the consent of Congress and for the national treasury. As with the United States, the granting of titles and passing bills of attainder and *ex post facto* laws were prohibited.

In the Constitution and amendments.

Schouler, *ibid.*, 148–150, 190–197.

135. **Prohibitions and Limitations on the United States Government.** — Beside the prohibitions placed upon the national government by the Constitution proper are those dealing especially with the rights of individuals in the first nine amendments. The principal constitutional prohibitions deal with duties on exports from the states, *ex post facto* laws, bills of attainder, and titles of nobility; the principal limitations with the writ of *habeas corpus*, which shall not be suspended except in case of war, with direct taxes, with commerce, and drawing money from the treasury. In the "bill of rights" the citizen is guaranteed immunity from interference by the central government regarding religion, freedom of speech and the press, the keeping of arms, and quartering of soldiers. In criminal cases full provision is made for the fullest rights of the accused; and the ninth amendment declares that "the enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people."

Different views.

Hinsdale, §§ 241–247.

136. **Sources.** — Historical writers have found some difficulty in agreeing upon the sources from which the Constitution was really derived. Years ago there was quite a widespread feeling that a great part of the Constitution was invented by the Convention of 1787; but although some features are now spoken of as "original," practically all believe the Constitution is the product of the historical experience of the race, and that the great merit of the Convention was that it did not try to create anything, but adapted institutions already in existence to suit the conditions. Yet in determining what institutions were most used, writers have differed widely — one school emphasizing the dependence on English institutions, the other calling attention to the extent to which preëxisting American institutions and ideas were used.

137. English Sources. — According to the most radical English view, voiced by Sir Henry Maine, our Constitution is "in reality a version of the British Constitution." The more moderate view is expressed by Dr. Stevens when he says it is "not a mere imitation," but an "historical development from English forms." Taylor expresses much the same idea in the statement that "every American state is a mere reproduction of the central organization of the English Kingdom, with such modifications as have necessarily resulted from the abolition of nobility, feudality, and Kingship." In speaking of the model of the President, Bryce says the Convention "made an enlarged copy of the state governor, or, to put the same thing differently, a reduced and improved copy of the English King." So, that even with those who believe most strongly in the influence of English sources, the idea of development through colonial sources rather than conscious imitation is uppermost.

The Constitution in some ways a copy.

Curtis, in Winsor, VII, 237–246.

138. American Sources. — Other writers deny that we were so dependent on England, directly or indirectly. They not only call attention to the multitude of instances where the Convention made use of institutions existing in the states before 1787, but urge that many of the ideas of our federal system are purely American. For example, the principle of federalism is in nowise English, neither is the idea of a written constitution. They say that England never furnished anything like the electoral college or even our Supreme Court, and that our institutions were developed as much from the common stock of political ideas as from those brought over from England.

A purely American production.

Bryce, 14–15.

Johnston, in *New Princeton Review*, IV (1887), 175 *et seq.*

The truth in each of these arguments must be apparent. It is of course impossible to say how far the colonial institutions are English, but we do know that there is scarcely a feature of either the Constitution or the national government that cannot be traced to earlier American institutions, while direct conscious imitation of the English system of 1787 played a very small part in the work of the Convention.

The truth in each theory.

QUESTIONS AND REFERENCES

The Work of the Convention (§§ 106–116)

1. What was the most distinctive feature of the Virginia plan? Compare the essential parts of the Virginia plan, the New Jersey plan, and that of Hamilton. What sections, if any, of the last two were made parts of the Constitution?

2. What meaning was given to the words *national* and *federal* by the people of 1787? Why did the small states especially fear a strong central government?

3. Did equality of representation in the Senate prove that the states were sovereign? that they were equal in power? Was there any difference between a senator and a delegate to former congresses, or a member of the German *Bundesrath* to-day as to relation to his "state" and his rights in voting? Discuss fully.

4. State clearly the conflicting opinions that were harmonized by the compromises. Which side won in each case? Were any of the compromises unnecessary? Were any of them harmful in our later history?

5. In what ways are the constitutions of the principal countries amended at the present time? Was the method of our Constitution considered too flexible or too inflexible in 1787? What is our opinion about that now?

Ratification (§§ 117–120)

1. Which compromise did most in getting votes for the Constitution? Which compromise stood most in the way of ratification?

2. Why was the Constitution ratified by conventions instead of state legislatures? Why was it not ratified by popular vote in the states? by a majority popular vote of the people of the nation as a whole?

3. As the sphere of the states was different from that under the Confederation, did ratification through the states imply that the new government was not national? What plan of ratification was proposed by the Virginia plan?

4. Study Henry's argument in the Virginia Convention. Estimate the value of each objection. Have any of his prophecies proved true?

5. What semi-conditions were attached to the ratifications of Virginia and New York? Were they legally grounds for withdrawal from the Union?

6. When did the Confederation cease to exist? why? What in your opinion was the position of North Carolina and Rhode Island before they united with the other states? Were they sovereign, or did their actions prove conclusively that they were not? Why was there "a great political revolution of 1787"?

General Character of the Constitution (§§ 121–126)

a. On the compact theory especially consult Davis, *Rise and Fall of the Confederate Government*, I, Part II; Stephens, *War between the States*, I, colloquys III–VI, VIII, IX, XI; Sage (Centz), *Republic of Republics*, 41–69, 159–270.

b. Accounts more favorable to the national theory may be found in Johnston on *State Sovereignty*, in Lalor, III, 788–800; Hare, *American Constitutional Law*, I, Lectures IV–VII; Hurd, *Theory of National Existence*, chap. IV.

1. Select the "national" and the "federal" features of the Constitution. Do you think that the United States of 1788 was a Federal State? Apply explanation (§ 12).

2. Illustrate by example from later history how interpretation by the different departments has given the powers of the national government broader scope than was first intended.

3. What is the real value of "checks and balances"? To what extent are they necessary? What are their disadvantages?

4. Define the words *sovereign* and *compact*. Is the idea of *voluntary* agreement necessary to the latter? Was the union of the states voluntary in 1787?

5. Name all the parts of the Constitution that tend to confirm the compact theory; all that seem to indorse the national theory.

The Constitution in Outline (§§ 127–138)

a. On English sources see Bryce (abd. ed.), chaps. II–IV; Taylor, *English Constitution*, Introduction; and Stevens, *Sources of the Constitution*. On American sources consult Morey, *Sources of American Federalism*, *A. A. A.*, VI, 197–226; Fisher, *Evolution of the Constitution*, 105–309; Robinson, *Original Features*, in *A. A. A.*, I, 203–243.

1. Study the Constitution and the first amendments carefully.

2. Make a table comparing on all important points the Articles of Confederation and the Constitution. Consider at the least: objects, form of government, powers of central and state governments, relations to states and individuals and method of amendment. Learn the preamble. What was meant by the "people of the United States"?

3. What are the advantages of a two over a one chambered legislature? what of the different methods of representation in Senate and House?

4. Why is the power of Congress "to make all laws necessary and proper for carrying into execution the foregoing powers," etc., spoken of as the "elastic clause"?

5. What difference would it have made with our history if the power of the national courts had been restricted to the laws enacted by Congress?

6. What is the difference between delegated and reserved powers? between inherent and implied powers? If a power is "delegated," may any inference be drawn as to a power similar in character but not mentioned?

7. Classify all provisions of the Constitution or first ten amendments that deal with liberty as civil, religious, or political.

8. Select some one department and try to trace the origin of its different features and powers.

CHAPTER VI

NATIONALITY AND COLONIALISM (1789–1815)

General References

Mace, *Method in History*, 145–184. The meaning of events.
Johnston, *American Politics*, chaps. II–VIII.
Channing, *Student's History*, 279–368.
Hart, *Formation of the Union*, 141–222.
Walker, *Making of the Nation*, 73–273.
Von Holst, *Constitutional History*, I, 64–272.
Curtis, *Constitutional History*, II, 1–230.
Larned, under United States.
Schouler, *United States*, I–II.
McMaster, *People of the United States*, II–III.
Hildreth, *United States*, IV–VI.
Adams, *United States*. 8 volumes. The highest authority on the subjects covered.
Patten, *Political Parties*.
Johnston, in Lalor on Federalists, Democratic-Republicans, Embargo, Bank Controversies, Hartford Convention, etc.
Taussig, *Tariff History*.
Winsor, *America*, VII.
Macdonald, *Select Documents* (1776–1861), 46–207. Texts and notes.
Lodge's *Washington* (A. S.), 2 volumes; Marshall's *Washington*, 5 volumes; Morse's *John Adams* (A. S.); Lodge's *Hamilton* (A. S.); Sumner's *Hamilton;* Morse's *Jefferson* (A. S.); Schouler's *Jefferson;* Gay's *Madison* (A. S.); Steven's *Gallatin* (A. S.); Pellew's *Jay* (A. S.); Adams's *Randolph* (A. S.).

Nationality means more than a strong central government.

139. Character of Nationality. — There can be little doubt that, from the standpoint of our Federal State, the most important political fact of the century after we became independent is the development of nationality. Another fact of hardly less importance is the development of democracy. It must not be supposed that the terms *development*

of nationality and *growth of the national government* are synonymous. The former includes the latter; but while a spirit of nationality must sooner or later lead to a strong national government, it means rather a similarity in all social, economic, and political institutions in the different parts of the nation, and a common feeling on the part of all citizens with regard to matters of national concern. In a brief sketch it is, of course, impossible to more than indicate some of the steps by which the people of the United States became united; but an effort will be made to show how this was done by tracing two kinds of changes: first, those directly connected with the national government; secondly, those produced by alterations in state laws and customs. The importance of the different movements by which the action of the states on the many subjects left to their supervision became more uniform, has been largely overlooked by most of our historians, and the study of the subject is of recent date.

Nationality and colonialism.

Cf. Mace, *Method*, 145–149.

Cf. Johnston, in Lalor, I, 930–936.

140. Three Periods of National Development. — For the sake of convenience the development of nationality during the era from 1789 to 1877 will be treated under three heads. The first covers a period of about twenty-five years in which nationality was making a struggle for an existence worthy of the name. The chief obstacles in its path came from past conditions, such as the dependence of the states upon Europe instead of upon each other, the extraordinary strength of particularism, the distinctions in social classes, and the lack of economic independence, which is one of the essentials of national life. The second period begins with the changes following the War of 1812 and the overthrow of Napoleon. Its most marked characteristic is the growth of a national democratic spirit which breaks away from traditions in every line, and reaches a climax in the two decades following 1830. The third period is that in which the slavery question is most prominent. The territorial expansion which led directly to slavery agitation began about 1845. The struggle between free and slave labor to

Nationality and democracy.

see which should be made national resulted in the triumph of the former, and through war, not only destroyed slavery, but removed the conditions which underlay the slave system, and came near injuring the rights of states to which slavery had appealed in its extremity. It must not be supposed that, because the national era is divided into periods named from the most striking characteristic, each period marks the beginning and close of that movement. For example, we must not imagine that democracy exerted no influence before 1815 or after 1845, but before 1815 it is less prominent than colonialism, and after 1845 it sinks into insignificance before the contest over slavery.

Nationality and slavery.

141. **Conditions affecting Nationality** (1790). — The most important influences that kept the states apart in 1790 were particularism, sectionalism, and physical conditions. Except for their interest in the national government and their personal loyalty to the great leader who had been made President, the people of the states felt their separateness from each other. The peculiar customs and occupations of colonial times gave way very slowly to new methods. Few persons ever crossed state boundaries so as to enter into sympathy with their neighbors. Sectionalism was an additional disadvantage, especially as gradual emancipation at the North tended to separate the sections more on the slavery question. But it was the antagonism between the commercial and agricultural interests that presented even a graver danger at this time. These tendencies toward separateness could have been easily overcome had there existed railroads and telegraph lines as at present, but means of communication were very imperfect. Even if travelling was not dangerous, it was attended by very great discomforts. It took three days to get word from New York to Boston, and a month to go from Maine to Georgia by water.

Anti-national conditions.

To counterbalance these anti-national influences were all of the similarities of race, language, and of religious, social, and political institutions, the common commercial interests, and, most of all, the new central government clothed with

National influences.

such power that it could represent the whole country with honor.

The problem of establishing the new government.

142. **Organization of the Government: the President.** — The new national government was like a great machine which had been carefully constructed, but whose usefulness was yet to be proved. No one knew how well the parts would work together, how much political steam would be required to run it, and whether that much steam could be produced, or whether the machine might not prove so efficient that it would be cast aside by the overcautious people as a menace to the rest of the political system, that is, to the rights of the states and the liberty of the individual.

English customs followed. Cf. Ford, *Amer. Politics*, chap. VI.

That the government proved a success was largely due to the personal popularity of Washington and his judgment both in the selection of advisers and in the choice of policies. He had been chosen unanimously by the electors, and was inaugurated with considerable pomp. He had gone to Congress with a coach and six, had read his speech like an English King addressing a Parliament. The speech had been discussed at length in committee of the whole, and a reply had been framed according to the English custom. Through this speech and the secretaries' reports, the executive had exerted very great influence in legislation; but both the President and the heads of departments had been formally excluded from the floor of Congress.

The presidential succession.

Cf. Ford, chap. VI.

Washington might have made our system more like that of England had he chosen to accept office for more than two terms. Even as it was, a custom grew up, like that used in the mother country, of selecting as chief executive the leading party man who had been trained in administrative work and who was the "heir apparent." This custom lasted until supplanted in 1829 by the democratic custom of choosing popular heroes irrespective of training.

Executive departments under the Confederation.

143. **The Executive Departments.** — It seemed to have been pretty generally understood in the Convention that a large part of the work of the executive should be carried on through departments. During the Revolutionary War and

the Confederation, matters pertaining to foreign affairs, finance, and war had been dealt with at first by boards, and after 1781 by heads of departments aided by other officials. After the resignation of Superintendent of Finance Morris, Congress, dreading such efficiency, went back to the board system for the Treasury; but foreign affairs, war, and the post-office remained in charge of single individuals.

Departments reorganized (1789).

Schouler, *United States*, I, 93–96.

Walker, *Nation*, 88–94.

Abandoning the board system altogether, Congress during the summer of 1789 organized three departments, while the President was given two other assistants. The departments were those of State, the Treasury, and War; the assistants were the Attorney-general and the Postmaster-general. The three secretaries and the Attorney-general in time came to form the President's cabinet, which was, from the character of our system, essentially different from the English cabinet. The secretaries could not be members of Congress, and the only times they attempted to speak in either house the effort was unproductive of results. Nevertheless they did, largely through the influence of Hamilton, follow the English method of making themselves felt in the making of laws; though as later cabinets contained men of less political force, this influence was largely temporary.

Methods of election.

McMaster, *United States*, I, 530–532.

Hart, *Union*, § 73.

144. **The Congress.** — The method of election for members of the House shows the lack of uniformity in political methods prevailing throughout the country. In some states congressmen were chosen by districts, in other states on a general ticket. There was no set day, and in certain localities the polls were kept open two or three weeks. Even the ballot was not in use everywhere.

Organization of the House.

Schouler, *United States*, I, 80–85.

The House was at first more powerful than the Senate, probably on account of its more popular character and the importance of financial measures, but the Senate gradually made good its claim to a coördinate position. The speaker was chosen as a mere presiding officer, like those in most of the colonial assemblies and the House of Commons; but after 1790 had the appointment of temporary committees, and later became a party leader. As the amount of business

was small, the system of standing committees did not come immediately into use, but was gradually developed.

Secret sessions of the Senate.

During the first five years the business of the Senate was transacted behind closed doors, but on many important measures we know that the decision rested on the vote of the Vice-president.

The judiciary act (1789).

Schouler, *United States*, I, 96–97.

Cooley, *Const'l Hist.*, 42–52.

145. The Judiciary. — The organization of the courts, which by the Constitution had been left to Congress, was part of the work of the first session. A law was passed in September, 1789, providing for a supreme court, three circuit courts, and a number of district courts, each covering a part or the whole of a state. Six justices were appointed for the Supreme Court. There were no separate circuit judges, but the work of each circuit court was left to two justices of the Supreme Court and the judge of the district in which the session was held. As assistants of the judges, attorneys and marshals were appointed for four years.

Relative unimportance of the judiciary.

The relative importance attached to the duties of the Supreme Court may be appreciated when we know that before 1801 five appointments to the chief judgeship had been made, two of which were declined, one rejected by the Senate, and two accepted only to be given up later for more attractive offices. In sharp contrast with these changes is the long term of Chief Justice Marshall, from 1801 to 1835, during which he not only established the claim of the court to a position by the side of the other departments, but gave incalculable strength to the national government.

Chisholm v. *Georgia* (1792).

Walker, *Nation*, 127, 128.

In the first important case decided by the court, *Chisholm* v. *Georgia*, in 1792, Justice Iredell had upheld the extreme national theory of the Constitution, and the court had decided that a state might be sued by a citizen in a United States court. This so alarmed the advocates of particularism that the eleventh amendment was proposed and ratified in 1798. This was a serious blow to the judiciary and to nationalism as well.

The lack of discretion with which the Federalists used the powers of the central government during the adminis-

tration of Adams (§ 153) produced a widespread belief that the interpretation of the Constitution could not safely be left to the national courts by virtue of their jurisdiction over "cases arising under the Constitution." In consequence, the reasoning of Marshall and the decision in *Marbury* v. *Madison* (1803) was of especial moment. The chief justice showed that unless the court could interpret the Constitution, and set aside a law conflicting with it, Congress would be unrestrained in the use of legislative power. He applied his argument by declaring unconstitutional a law which would have increased the jurisdiction of the Supreme Court, and thus readily gained acquiescence in the stand taken.

Marbury v. *Madison* (1803).

146. **Questions of Policy: Finance.** — The most important matters to be decided by the new government in 1789 were those relating to finance, foreign policy, and the execution of laws.

Influence of Hamilton.

Mace, *Manual*, 152–158.

Macdonald, *Documents*, 46–76, 98–112.

Von Holst, *Const'l Hist.*, I, 80–105.

In the creation of a system of finance the master mind of Hamilton was everywhere predominant. The great Secretary of the Treasury had in view three objects: (1) to establish the national credit on a firm basis; (2) and most important, to strengthen the national authority; and (3) to aid in the industrial development of the country. To this end he proposed three things: (1) different kinds of taxes; (2) payment in full of the public debts; (3) the creation of a national bank to assist the government in caring for its business interests.

147. **Revenue.** — The first revenue act passed by Congress (1789) was one imposing duties on imports with a view also to "the encouragement and protection of manufactures." After Hamilton made his famous report on manufactures two years later, this tariff was several times revised, and the duties raised. This revenue was supplemented by the excise upon liquors which was a form of internal revenue that brought certain manufacturers into close contact with the government. These excises caused considerable opposition, especially in Pennsylvania where the distillers of the

Customs and internal taxes.

Walker, *Nation*, 84–87, 144–147.

Johnston, in Lalor, II, 574–575.

mountain districts organized what is known as the Whiskey Rebellion. But the new government was as energetic in enforcing its laws as it had been fearless in making them, and this added greatly to its prestige. Later a tax on carriages (1794) was added, and in 1798 the first direct tax was levied upon slaves, houses, and lands. When the Republicans came into power, they repealed the internal revenue laws, to which they had been opposed; and except for a brief period during the War of 1812 the sole sources of revenue until the Civil War were customs and the public lands.

Three classes of debt.

Walker, *Nation*, 78–81.

148. **The Public Debts.** — The second great financial measure dealt with the domestic, foreign, and state debts. Hamilton was anxious to show that the United States always paid its debts in full, so that he might attract the commercial classes to the new government. In order to increase the national power to as great an extent as possible, he also wished to have the government assume the debts incurred by the states during the Revolutionary War. He encountered no serious difficulty in persuading Congress to assume all of the foreign debt and very little in inducing it to pay all domestic bonds at their face value; but the last proposition — the assumption of state debts — was vigorously opposed by those states whose debts were either insignificant or had already been paid. As it happened, these states were largely devoted to agriculture, and were further offended by the secretary's anxiety to please persons interested in commerce. In order to gain enough votes for the measure, Hamilton agreed that several Northern votes should be cast in favor of having the new capital on the Potomac, and this only incensed the Southern agricultural interests the more. While these measures gave the United States a financial standing it has never wholly lost, it may well be questioned whether the country did not pay too high a price for "state assumption."

Compromise over assumption.

McMaster, *United States*, 1, 579–583.

Its purpose.

149. **The National Bank.** — To facilitate the transaction of business by the government, and to give the people the

benefits of a national paper currency, Hamilton in 1790 proposed a national bank upon the model of the Bank of England. The bill creating such a bank was carried in the face of considerable opposition, which was based upon the supposed unconstitutionality of the measure. When it was sent to Washington, he asked the advise of his cabinet upon it. The opinions of Jefferson and Hamilton are especially important, because they definitely formulate views on "strict" and "loose" construction of the Constitution. Jefferson showed that the power to create a bank was not among those expressly delegated to Congress. He argued that a bank was not a "necessary and proper" means of carrying out the financial policy of that body, because it could get along without it; and finally, he declared that if the national legislature could decide what means were "necessary and proper," it would invade the sphere of the states and destroy their rights.

Jefferson's argument against the bank.

Macdonald, *Documents*, 76–81.

Hamilton just as unequivocally indorsed the doctrine of "implied powers." He called attention to the fact that the states and the nation have different spheres of action, and that the United States is sovereign within its own sphere. He claimed that "implied" as well as "express" powers were delegated, and showed that the use of an implied power to supplement an express power could not injure a state if the *object* for which both were used was one not reserved to the states. He further claimed that "the *relation* between the *measure* and the *end*, between the *nature* of the *mean* employed toward the execution of a power, and the object of that power, must be the criterion of constitutionality, not the more or less of utility."

Hamilton on "implied" powers.

Macdonald, 81–98.

(On the doctrine, see Channing and Hart, *Guide*, § 159, and Story, *Commentaries*, §§ 1242–1258.)

Washington accepted the view of Hamilton and signed the bill. The legislative and executive departments were thus finally committed to the doctrine of "implied powers," at least during the Federalist *régime*, and in 1819, when discussing the constitutionality of the second United States bank, the Supreme Court accepted the same view (§ 168, see also § 325).

Doctrine of implied powers indorsed.

Foreign dependence.

Mace, *Method*, 158–164.

150. Foreign Affairs. — On account of our isolation, foreign affairs were much less important than they would have been had our immediate neighbors been powerful. Nevertheless, we were dependent upon Europe for so many things that the danger of foreign complications and consequent European domination was very grave. We had been saved from French control in 1783 by the independent action of our peace commissioners. In the troublous "Napoleonic" times, which unfortunately coincided very nearly with the first quarter century of our constitutional history, greater difficulties were likely to come up. The first crisis was reached when the war between England and revolutionary France broke out. Though the country was divided into two great camps and feeling ran high, the bold and independent attitude of Washington in the Proclamation of Neutrality (1793) placed us outside of the sphere of European politics. Although this did not relieve us from some forms of European domination, it did more than anything else could have done to give us a high international position. The comparative failure of Jay's treaty with England (1794), and the X. Y. Z. Mission in France (1798), must be charged to the condition of Europe, and to the fact that we had not yet risen from the fourth rate nation of the Confederation to a first rate power.

Proclamation of Neutrality

Macdonald, 112–114.

Disappearance of the Anti-federalists.

151. Formation of Parties: the Democratic-Republican. — It is very remarkable that the Anti-federalist party ceased to exist with the adoption of the Constitution. Those persons who had at first been opposed to the new government acquiesced in it, but, as a rule, favored the restriction of its power as much as possible. They naturally allied themselves with the party that believed in the "strict" construction of the Constitution.

Followers of Jefferson organize.

Johnston, in Lalor, I, 769.

During the first term of Washington there were no well-defined parties; but the natural antagonism, personal and political, between Hamilton and Jefferson, caused the personal following of those statesmen to take different sides on almost every question that came up. The controversy over

the national bank may be said to have placed the parties on a definite footing, the followers of Jefferson holding to a "strict" construction of the Constitution, those of Hamilton to a "loose" construction, involving the use of "implied" powers. But in addition to their attitude toward the Constitution, the party of Jefferson, or the Democratic-Republicans, adopted the views of their leader on foreign and domestic questions. They wished to have the government show its sympathy with the French Republicans, and they believed that government should be as far as possible of the people as well as for the people. Since the state governments seemed to be closer to the people than the national government, they wished to restrict the central authority and strengthen that of the localities.

Views of the Federalists.

152. Federalist Party. — The Federalists disagreed in every respect with the Democratic-Republicans. They believed not only in a strong national government, but thought success could be attained solely through government by the aristocracy, the "well born," and by alliance with the commercial classes, while to them democracy meant mob rule. The excesses of the French Revolution increased their admiration for the stability of the English system, so that a deep chasm separated the French and the English party.

Benefits of parties.

Undoubtedly party divisions have great disadvantages, and were in a sense justly condemned by Washington in his Farewell Address; but they have been absolutely necessary to our proper constitutional development, and have exercised the very greatest influence on our history. They have fixed the interests of the people on the government, have educated and organized public sentiment, have carried out popular wishes in the administration of government with little friction or disorder, and by the watchfulness of the "outs" have held the party in power responsible for all its acts. In doing this they have often resorted to vile abuse, have more than once pandered to popular prejudice or ignorance, and have aided materially in developing certain vicious political principles.

Anti-foreign laws of the Federalists (1798).

Channing, § 208.

Macdonald, *Documents*, 137–148.

153. **The Alien and Sedition Laws.** — Although parties did not exist at first, the new government had been run from the beginning on Federalist principles, but the Democratic-Republicans had been gradually gaining ground. During the administration of Adams the bold stand of the Federalists regarding foreign affairs won for them such a measure of popular approval that they accepted the verdict of the elections as an indorsement of their whole policy. On this account they proceeded to apply their principles in their most extreme form. The result was the passage of three laws (1798), passed ostensibly to protect the country against foreigners, but quite as much for the purpose of silencing Federalist critics. The Naturalization Act required a residence of fourteen years before a foreigner could become a citizen; the Alien Act gave the President power to expel aliens whom he considered dangerous to the community; and the Sedition Act provided penalties for those who defamed the government. The day had gone by when such arbitrary government would be peaceably accepted by the people. In the uproar that followed, the power of the national authority must have been greatly weakened, perhaps injured beyond repair, had not the storm spent its force on the Federalist party. This had two good results, — it assured the continued existence of the central government, and it made parties realize that they were the servants of the people.

The Republican protest.

Channing, § 209.

Macdonald, 148–160.

154. **Virginia and Kentucky Resolutions (1798–1799).** — Yet it had one influence that in the light of later history was unfortunate. The contest had been changed from one of government and people to one between the Federalists and the Republicans by organizing the opposition to the Federalist policy. Jefferson and Madison believed they could do this most effectively by persuading the state legislatures to protest (1798) against the laws as in excess of the powers conferred upon the central government. These protests are commonly called the Virginia and Kentucky Resolutions. They declare that when the national government exceeds its

authority, the laws are of no effect; and a later resolution (1799) from Kentucky stated that "nullification" was the "rightful remedy." Most of the other states disclaimed the right to interpret national laws, but the principle that a state could declare a law of Congress null and void grew till some sections believed that they should go further than a declaration and actually interfere with the execution of that law.

Nullification.

155. The Revolution of 1800. — In the election of 1800 the Federalists lost so much ground that the Democratic-Republicans had a clear majority in the electoral "college"; but owing to the method then in use each elector voted for two persons, and the one that stood highest was declared President, while the one that stood second was Vice-president. For the first time the electors that year merely registered the vote of their party; but it happened that the vote was a tie, as Jefferson and Burr had seventy-three each. Jefferson was the real nominee of his party and should have been chosen at once, but according to the Constitution the decision was left to the House of Representatives. After a protracted contest in which the Federalists threw most of their strength to Burr, Jefferson was elected. Soon after a new amendment, the twelfth, was proposed so that the electors designated whether the vote was cast for President or Vice-president.

The disputed presidential election.

Stanwood, *Presidency*, 54–73.

The election of Jefferson was marked by many changes which were, in the opinion of that leader, sufficient to call the election a revolution. Class rule began to disappear. Republican simplicity was introduced everywhere. The inaugural presaged a wise and moderate rule with such alterations only as should give better and more popular government. The internal revenue system was gradually abolished, and the strong naval policy of Adams's administration gave place to the "gunboat" scheme. All monarchical tendencies were checked, and a current was created in the opposite direction.

Effect of the Revolution.

Hart, *Union*, §§ 94–97.

Channing, §§ 223–226.

156. The Purchase of Louisiana. — The first important question that came before Jefferson's administration was

Events connected with the purchase.

that of Louisiana. Difficulties over the navigation of the Mississippi had led to the appointment of commissioners to secure the purchase of the Isle d'Orleans so that we should control all of the east bank of the river. While we were negotiating for this strip there came from Napoleon an offer to sell all of Louisiana, which was most unexpected but gladly accepted by the commissioners, the President, and the people. As, however, doubts existed as to the constitutionality of the purchase, Jefferson recommended a constitutional amendment authorizing the acquisition of territory. Before that could even be considered Louisiana came into our possession.

Upon construction of the Constitution.

Walker, *Nation*, 180–184.

Davis, S. M., in *A. H. A.* (1897), 151–160.

157. **Influence of the Purchase.** — The influence of the purchase was very wide-reaching. Even though an amendment might legalize such acts, it could not make this particular purchase constitutional. The party which had spent years developing a strict constructionist policy had made a more liberal use of implied powers than their much abused predecessors. Strangely enough this breach with the past in no wise injured the party strength, for popular approval of the acquisition was so pronounced that the Republicans gained ground everywhere. Consequently, after 1803, strict construction could never mean the same that it had before.

Upon the Federalists.

Upon the Federalists the purchase exerted fully as much influence. They had never recovered from the Alien and Sedition Acts, and from their unpatriotic action in the election of 1800. As the party out of power, their loose construction policy had lost most of its force, and was an injury rather than a benefit. The whole trend of society was away from their idea of class rule, and now by the adoption of a liberal interpretation of the Constitution the Republicans had taken all the wind out of their sails. Add to this the strenuous opposition to the purchase for narrow sectional reasons, and it is not surprising that the Federalists practically disappeared.

Only the future could reveal what the effect of the purchase would be on later history. There were many who

thought our country too large for union without Louisiana, and believed that we would break up into a number of sections. In spite of the great system of navigable rivers permeating the Mississippi basin, it was a serious question whether the different parts of the country could be kept in touch with each other. The chief danger lay in imperfect communication, and in 1803 no means for greatly improved transportation had been devised. But if there was doubt as to the influence on *nationality*, there could be none along other lines. The most serious difficulties likely to arise from having a powerful neighbor at our very door were removed. The *democratic movement* which was making such progress in the West would have room to develop, and real popular government was assured as the West was now larger than the East. The field left open to *slavery* was increased, but only one vertex of the triangle was at the South while the North claimed two.

Upon the future of nationality, democracy, and slavery.

158. **Foreign Domination.** — With the exception of the few years during the Confederation the period of greatest impotence in foreign affairs occurred between 1805 and 1811. The abnormal condition of Europe was, of course, largely responsible for this foreign domination, for we could not separate ourselves from the war conditions which prevailed elsewhere in the civilized world, and consequently had the choice of submission to indignities or war. The administration of Jefferson tried to grapple with the problem by restraining American commerce in order to injure our foreign foes. To do this it was necessary to use national powers nowhere delegated. But embargoes and non-importation acts injured us more than they did either England or France ; while we, duped by both powers, sank to the lowest depths of international degradation.

Humiliation of the nation, 1805–1811.

Montgomery, *Student's Amer. Hist.*, §§ 288–295.

Hart, *Union*, §§ 102–108.

159. **Nationalist Reaction.** — The humiliation of our position appealed so strongly to the younger branch of the Republican party, that without fully comparing the insults we had received from both France and England they brought the government to declare war on the latter. The

Influence of the war of 1812 on nationality.

Walker, *Nation*, chap. XIII.

war itself was little better than a farce, as England was too much taken up with her contest on the continent to spare many war ships for America, but it was productive of many direct and many more indirect benefits. The indirect results will be considered later. Of the direct results all were favorable to nationality. (1) The people were so disgusted with the failures of the previous decade that they united in support of the national wing of the Republican party. (2) The New England Federalists, whose opposition to the war was based on grounds excellent in themselves, but purely sectional, gave their party its death blow when they seemed to be aiming at secession in the Hartford Convention (1814). (3) The humiliation felt at the burning of Washington, and the joy over the victories of Perry, Macdonough, and Jackson quickened in different ways the national pride.

Influence of the West in developing democracy.

Turner, F. J., in report of Herbart Society, V, 10, 28–41.

160. **The Westward Movement.** — During this quarter century, from 1790 to 1815, many of the evidences of colonialism in the states were swept away by the growing democracy. The levelling movement in society and in politics which succeeded the Revolutionary War spent much of its force before 1789, and would have produced but few other radical changes had it not been for the new impulse given by the occupation of the West.

Frontier settlements are always unfavorable to social and other distinctions. In the great migrations that took place from England to the Atlantic coast most of the prominent class inequalities of the mother country were left behind. The same thing occurred when the country west of the Alleghanies was settled in the years following 1780, for here every one was on the same footing from the first. These conditions so easily established were preserved largely for the sake of inducing others to come. Universal suffrage, lack of limitations on trade, abundant land, and a more real equality before the law went far to compensate for the rough frontier life, so that immigration was large. Soon the older states, moved both by the spirit of the times and a

desire to retain their inhabitants, began to modify their laws still more. The most important changes in the East came after 1815; but progress before that date was sure, even if not rapid.

161. The State Constitutions. — The progress in the states was registered by the constitutions. As it always required considerable agitation to alter the fundamental law of a commonwealth, and as our forefathers were politically more conservative than we, it is readily seen that the three Western states could not at once raise the political level of the whole. Between 1776 and 1790 seventeen new constitutions were adopted besides the adaptation of the charters of Rhode Island and Connecticut. Between 1791 and 1815 there were but nine, of which only two were in the original thirteen states. Of course, as the constitutions were brief and touched upon few details, many matters might be changed by statute which would now find a place in the constitutions; yet as the most important subjects were regulated by constitutional law, this accounts for the few extensions of the franchise and for the failure of the democratic movement to alter state institutions, or to leave a lasting impression upon anything but the statute law. Some progress, however, had been made through the constitutional amendments, some of which had abolished state aid to church institutions and religious qualifications for office.

Changes between 1776 and 1815.

Thorpe, *Const'l Hist.*, I, 263–266.

McMaster, *United States*, V, 375–380.

QUESTIONS AND REFERENCES

The National Era (§§ 139–141)

1. Compare the degree of nationality in 1790 and to-day by showing the difference in power of the central government, and the feeling of the people toward matters of common interest.

2. Show how state laws and customs have become more uniform.

3. What are periods of history? What is the exact use of dates in marking the beginning and close of such periods? Would our periods of United States history be the same if we were studying social history, industrial history, military history, literary history? Can you suggest limits for periods in these cases?

4. Has human progress the last few centuries favored nationality and centralization? Prove. Which century has aided in this movement most? why?

Organization of the Government (§§ 142–145)

1. Show what features of the new governmental organization were distinctively English. Did they tend to become more or less so?

2. What is the difference between the English and the American ideas of a cabinet? Has the lack of constitutional provision regarding executive officers been a help or a hinderance? What was the most important executive department and why?

3. What precedents do you find for the Supreme Court as to organization, jurisdiction, or methods?

Questions of Policy (§§ 146–150)

a. Different views of Hamilton's policy are given by Lodge in his *Hamilton*, 84–135, and in Sumner's *Hamilton*, 144–199.

1. Did Hamilton fail to secure any one of the objects he sought? Give an estimate of the influence of his financial measures upon the national government.

2. To what extent have we followed Hamilton's policy in our history? Which taxes proposed by him do we have now?

3. Should the difference in amount between the Northern and Southern state debts have affected the payment? Was assumption necessary? was it constitutional? was it wise?

4. What is the difference between strict construction in 1793 and now? Could the constitution have survived without the use of "implied powers"?

5. Make a brief outline of French history from 1789 to 1802. Was the Proclamation the right or merely the safe course? Does our conduct of foreign affairs before 1815 show a colonial dependence on Europe or the contrary?

Political Parties (§§ 151–154)

a. On the Alien and Sedition Laws, cf. Johnston, in Lalor, I, 56–58; with Ford, *Amer. Politics*, 109–114.

b. For further information on the Virginia and Kentucky Resolutions, see Johnston, in Lalor, II, 672–677; Ford, *ibid.*, 114–120; Von Holst, *Const'l Hist.*, I, 142–167.

1. What is necessary that we may have parties? Would it be desir-

able to dispense with national parties if it were possible? Explain your answer.

2. To what extent did personal feelings enter into the formation of the first parties? to what extent French issues? constitutional questions?

3. In what particulars did each party represent the past? the future?

4. In what respects did the Alien and Sedition Acts fail to conform to republican principles?

5. Did nullification mean the same in 1798, in 1814, in 1828? State clearly all differences. What truth is there in the doctrine? what error?

6. Give all the reasons you can why the Federalist party went to pieces after 1800. What part of the work was of permanent value? Was there a "revolution of 1800"? Give your reasons in full.

Republican Supremacy (§§ 155–161)

a. Look up the embargo in Channing, §§ 235–237; Schouler, *United States*, II, 178–199; Von Holst, *Const'l Hist.*, I, 200–216; Johnston, in Lalor, II, 80–84.

1. Show the part played by the navigation of the Mississippi in our history before 1803. What were the boundaries of Louisiana purchase?

2. Was the purchase of Louisiana constitutional?

3. If you had been living in 1803, and knew nothing of our later history, what would have appeared to you as the advantages of the purchase? its disadvantages? Consider its effect on the whole country, or sections, on the powers of the central government, as a means of perfecting or injuring union, upon future policies, etc.

4. Outline European history from 1802 to 1815. Why were the British Orders in Council and French decrees issued? Was the embargo a greater injury to America or to Europe?

5. What objections did New England offer to the war? What was the purpose of the Hartford Convention? What constitutional amendments were proposed by it? Did it favor nullification? secession?

6. Name all of the events from 1789 to 1815 which showed a dependence on Europe. Summarize all changes in social, political, and economic conditions during that period.

CHAPTER VII

NATIONALITY AND DEMOCRACY (1815–1845)

General References

Johnston, *American Politics*, chaps. IX–XV.

Channing, *Student's History*, 367–442.

Hart, *Formation of the Union*, 223–262 (to 1829).

Wilson, *Division and Reunion*, 1–115 (from 1829). This is the third volume of the Epochs of American History. It is a little more discursive than Hart's *Formation of the Union*, but an excellent account.

Burgess, *Middle Period*, 1–288. A scholarly book devoted to the political and constitutional history connected with the national government.

Stanwood, *History of the Presidency*, 106–225.

Ford, *Rise and Growth of American Politics*, 130–216.

Benton, *Thirty Years' View.*

Von Holst, *Constitutional History*, I, 302–II, 466.

Schouler, *United States*, III–IV.

McMaster, *United States*, IV–V (to 1825). Volume V gives quite a little information on democracy.

Thorpe, *Constitutional History*. 2 volumes. The best book on democracy and constitutional development in the states.

De Tocqueville, *Democracy in the United States* (1831). A philosophical description of political institutions and of political and social conditions. Very valuable.

Cleveland, *Growth of Democracy*, parts of chaps. VIII–XIV. Excellent for reference.

The following from the *American Statesmen Series* deal with this period: Sumner's *Jackson*, Gilman's *Monroe*, Morse's *J. Q. Adams*, Schurz's *Clay*, Lodge's *Webster*, Von Holst's *Calhoun*, Magruder's *Marshall*, Shepard's *Van Buren*, McLaughlin's *Cass.*

In the *American Commonwealth Series*, Carr's *Missouri*, Cooley's *Michigan*, Browne's *Maryland*, and Robert's *New York* deal with certain important phases.

Larned, *History for Ready Reference.*

Lalor's *Cyclopedia*, articles by Johnston on Controversies, Tariff, Nullification, Bank Controversies, Judiciary, Compromises, IV: by Koerner on Monroe Doctrine, and Knox on Banking in the United States.

Impetus given by the War of 1812

162. The Movement toward Democracy. — Before 1815 the way had been fully prepared for the development of both nationality and democracy, and in the period following the war both advanced with tremendous strides. The war had done two things: it had produced a new set of conditions, and it had awakened a new spirit in the people. The activities of all kinds following the treaty of Ghent (1814) were in marked contrast with the comparative stagnation preceding it. Perhaps the most fateful of the new movements was the rapid expansion of the West. Immigration was large, and the territories were rapidly prepared for statehood. Fully abreast with the advanced ideas of the times, the new constitutions were an influence felt all over the country. The East, infused with new life, adopted a series of constitutions that showed the progress democracy had made. Little by little the democratic wave removed the survivals of colonialism. The national and the state governments were transformed, if in any way they failed to respond to democracy; new political methods were introduced, and different ideas gained ground. The wave reached its height about 1840 in the West, and a little later in the East. It then gradually began to subside as people came to realize that after all democracy was not the panacea for all political ills. But with all its faults, democracy had taught many lessons in the art of self-government, and proved a great aid in the development of nationality.

Conditions favorable to industry.

163. Economic Changes. — During the early part of the century, machinery had begun to take the place of hand labor in the production of the world's products. The change from the old or house plan to the new or factory system began in the United States about 1810. Soon after the blockade of our coasts by British war vessels made it necessary to manufacture what we had formerly imported.

As our war with England ended about the time Napoleon was finally expelled from Europe, and as the return to peace conditions was followed by very great production in England, we found our markets flooded with goods imported from abroad. In order to keep our infant industries from being overwhelmed, it was necessary to place restrictions upon competing goods, by the establishment of a higher tariff based on the principle of protection. It is indicative of the national sentiment of the people that the vote on the tariff of 1816 was not sectional, and that strong support of the measure came from the South and West.

Tariff of 1816.

Burgess, *Middle Period*, 8–13.

164. The United States Bank. — It must be taken into account that this tariff was passed by the Republican party, now the only one in existence. How far they had deserted their old principles may be seen by other nationalistic measures. The charter creating the bank of 1791 had expired in 1811, and the bill to recharter it was defeated by a very close vote in both houses; but the failure of the favorite republican devices to meet the demands for money placed the finances of the country in a very bad condition. To assist the government in its difficulty, as well as to bring order out of the financial chaos, a new bank much stronger and more national, withal more democratic than the first one, was proposed. The bill creating this was passed without serious opposition.

Creation of the second national bank.

Burgess, *ibid.*, 3–8.

Johnston, in Lalor, I, 201–204.

Army and navy reorganization.

About the same time the army and navy were reorganized on a peace footing, and in both cases the party gave up its former opposition to a strong military and naval policy by making them much more efficient than even under the Federalists.

Burgess, *ibid.*, 13–14.

Settlement of the West.

165. The Westward Movement and Internal Improvements. — The extent of the migration to the West may be judged from the growth of population in that section. In 1810 Ohio had 230,760 inhabitants; in 1820, 581,295. Indiana's population increased during the same decade from 24,520 to 147,178; Illinois's from 12,282 to 55,162; Alabama's from about 20,000 to 127,901, and others in the same propor-

tion. During the six years following the war, six states were admitted, all but Maine being in the West.

Internal improvements by national government.

This movement was not entirely unaided by the national government which sought to unite the East to the West by national roads and canals. A beginning was made in 1806 when money was appropriated for the Cumberland Road, though when (1808) Gallatin suggested his famous scheme of many canals but little had been done, owing to the failure of the surplus. An attempt was now made (1816) to create a permanent fund for internal improvements, but failed through the veto of President Madison, who doubted its constitutionality. Although much was done later, the opportunity was thus lost to strengthen the national government, and the states were left the construction of the great highways which were invaluable before the advent of the railway.

Hart, *Union*, §§ 121, 136.

Slavery and state admission before 1820.

166. The Missouri Compromises. — At the first there had been opposition to the admission of new states, based on sectionalism or prejudice. Suggestions had been made in the Convention of 1787 that the new states should never outnumber the old ones, but happily it found no favor. In 1803 the acquisition of Louisiana territory, and in 1812 the admission of the state of the same name, were the occasions for threats of secession from New England. But after 1815 the old grounds for opposition disappeared, and the only important issue involved in state admission was that of *slavery*. Care had been taken to keep a balance between the slave and the free states before that time, but it became much more prominent with the increased westward migration. The importance attached to slavery as an issue in state admission was clearly brought out in the debate on the petition from Missouri to enter the Union (1818–1820). Tallmadge's amendment to the bill for admission in favor of gradual emancipation was the signal for battle. As the South was more united in its action than the North, the South was able to control the Senate, but the three-fifths provision left it hopelessly in the minority in the House. After the greater part of two sessions of Congress had been

The Compromise.

Johnston, in Lalor, I, 549–552.

Macdonald, *Documents*, 219–226.

Von Holst, *Const'l Hist.*, 356–381.

Burgess, *Middle Period*, 61–103.

taken up over discussions, the deadlock was broken by the compromise that Missouri should be admitted as a slave state with Maine as a free state, while slavery should be "forever prohibited" in other parts of Louisiana territory north of 36° 30′. A second compromise (1821) permitted the entrance into the state of free negroes who were citizens of any other state.

Conflict between nationality and slavery postponed.

Cf. Burgess, *ibid.*, 103–107.

167. Effect of the Compromises. — These compromises settled temporarily at least two points of the highest importance: one dealing with constitutional law, the other with political history. First, it was decided that after a state asked for admission Congress could not impose upon it any important condition, but must allow it to decide for itself what its attitude should be on all subjects with which the national government could not afterward interfere within its limits. Second, the contest between nationality and slavery was postponed thirty years, much to the advantage of the former, which was steadily gaining ground. How effectual the settlement of the question was considered is apparent from the fact that parties were not created by the different opinions on the issue of slavery. Thoughtful men, however, realized that in this sectionalism was the great danger to the Union, but believed that while sectionalism would continue to exist, the 36° 30′ compromise had made conflict between it and nationality impossible. The great gain to the central government came from the clearer definition of its power to control the public territory which was expressly stated by all of Monroe's cabinet and universally admitted.

Its influence in developing nationality.

Hart, *Union*, § 125.

Channing and Hart, *Guide*, § 175.

168. The Supreme Court. — The influence of the Supreme Court in developing the power of the national government at this time can hardly be overestimated. The court had adopted a moderate tone, had distinctly excluded political questions as such from its jurisdiction, and had won general approval by its fairness (§ 381). It was quick to take advantage of the national spirit produced by the war, and to make that spirit a permanent force in the central government. Beginning with 1816 a series of important decisions

was rendered especially by Chief Justice Marshall and Justice Story. Two of these in 1816 and 1821 made good the claim of the court to try on appeal cases begun in state courts but involving national law, even when the state protested against this use of appellate jurisdiction by the Supreme Court. In *McCulloch* v. *Maryland* (1819) Marshall sustained the constitutionality of the national bank and denied the right of state to tax one of its branches. In doing this he said that the laws of the United States were supreme within their sphere, and that if a power was delegated to the United States government, it might select what means it considered best in the performance of its duty. The same year in the *Dartmouth College Case* the clause prohibiting the states from passing laws impairing the obligation of contracts was held to apply to the alteration of charters granted by the states. These and other decisions of similar character made it possible for the central government to use its granted powers with greater effect, and acted as a check on the states. The decisions caused considerable opposition, but their enforcement was not successfully resisted till the famous *Cherokee Case* in 1831 (§ 176).

The Monroe Doctrine.

Hart, *Union.* §§ 128, 129.

Koerner, in Lalor, II, 898–900.

Macdonald. *Documents,* 228–230.

169. Foreign Affairs. — When John Quincy Adams became Secretary of State in 1817, our foreign relations began to feel the effect of the bolder attitude of the people. The most famous instance of the new policy is embodied in what is known as the "Monroe Doctrine." In the years following Waterloo the principal monarchies of Europe had formed the Holy Alliance for the suppression of republican doctrines within their own borders and in other states. When they sought to apply their reactionary principles to the revolted Spanish-American states, Canning, the prime minister of Great Britain, asked the support of the United States in a protest against this course. After due deliberation it was refused, but Monroe in his message to Congress (December, 1823) stated that we intended to take no part in the affairs of European states, and that we should look upon "any attempt on their part to extend their system to

any portion of this hemisphere as dangerous to our peace and safety." He further declared that we should not interfere with any other colonies, but that we should consider any effort to reconquer the South American states "as the manifestation of an unfriendly disposition toward the United States." This is, of course, in no respect a principle of international law. It is a statement of American policy, which was not at that time construed as placing upon us any obligation for the acts of our Southern neighbors.

Extension of the franchise.

McMaster, *United States*, V, 380–394.

Schouler, *Const'l Studies*, 231–248.

170. Democracy in the States (1815–1830). — Meanwhile a majority of the states had been adopting new constitutions. Those of the states in the Northwest were more democratic than the others. They had no qualifications for voters except residence, and required a much briefer residence for state officials than the East or South. The new Southern states had a liberal franchise, but demanded property qualifications of governors and assemblymen. Among the older states, Maryland had abolished property qualifications for voters in 1810, and practically all the others limited it to a nominal sum or required only payment of taxes. In its new constitution, New York gave the suffrage (1821) to free negroes, but only in case they owned property. We may judge of the changes in the franchise by comparing the proportion of voters in 1800 with that of 1830. In 1800 it is estimated that one hundred and fifty thousand men could vote, or one voter to every thirty-five inhabitants. In 1830 the number of possible voters was over a million and a quarter, or about one in ten.

The final separation of Church and State took place in New England, beginning with Connecticut in 1818 and ending with Massachusetts in 1833.

Other democratic tendencies.

Several other important tendencies are observable between 1815 and 1830, due to the influence of democracy. The constitutions are becoming larger and more detailed, requiring more frequent revision. The appointment of officials is giving way to elections for short terms. Officials are paid more in money and less in the dignity of their positions.

Bills of rights are taken as a matter of course, more attention being paid to applying them in laws, and finally the states are trying new experiments in legislation, in internal improvements, in banking, and even in loaning money to the agricultural classes.

Separation of the Democratic-Republicans into a conservative and a liberal wing.

Wilson, *Division and Reunion*, §§ 9, 10, 55.

Johnston, in Lalor, III, 1001–1008.

171. Party Changes (1820–1845). — As the nation after 1820 tended to sink back into the old ruts of particularism, the majority of the only political party in existence returned to a little stricter construction of the Constitution. This attitude was so unacceptable to a powerful minority that, under the lead of Clay, they gradually united to form a new party called at first National Republicans, and afterward Whigs. Their cardinal doctrines were internal improvements and protection, both of which they believed to be authorized by the Constitution. Their greatest strength lay in the Northeast, which was the manufacturing district; and in the Northwest, which looked to the national government for aid in developing its territory. As the states began to spend more on roads and canals, and as later the railroads made public expenditures for such purposes less necessary, the Whigs lost ground in the West and were able to carry that section only through the personal popularity of their Western leaders. In consequence, the Whigs never obtained complete control of all departments of the government, and seldom had a majority in Congress.

A democratic system of nomination.

Johnston, in Lalor, II, 1040.

Stanwood, *Presidency*, 166–177.

Ford, *Amer. Politics*, chap. XVI.

172. New Political Methods: Convention System. — We should naturally expect to find democracy introducing many radical changes in the methods used to gain political ends, and such is the case. Not satisfied with being able to pass a final decision on men and measures at the polls, it demanded the initiative in political affairs. In doing this a system of nominating conventions came into use. Formerly the politicians already in power had been in the habit of holding a caucus for the nomination of its candidates, and this was simply political class rule. But as the party out of power could not do this because it had so few representatives in Congress or the legislature, "outs" or new parties became

Dallinger, *Nomination for Elective Office*, 13–45.

accustomed to having delegates chosen from different counties to state conventions. In 1831 the Anti-masonic movement, seeking to perfect its organization, held a national convention. The example was quickly followed by the great parties, which, in many cases, adopted resolutions stating their policy. The latter in time grew into the platform, now an indispensable part of the work of a national convention.

The campaign and the party "machine."

Ford, *Amer. Politics*, 144–149.

173. **Other Methods.** — As each party was bidding for popular support, every effort was made to obtain votes. Two of the most important methods introduced were the campaign and machine organization. In the first, voters were to be attracted by the popular love of display and by "stump speaking." The later presidential elections of 1840 and 1844 were the best examples of this. Even more reliance was placed on more perfect party organization. The "machine" was not a new thing, for Tammany Hall had used methods like those of the present many times since it was formed in 1789, but now the party "boss" became a recognized power in political circles, while federal and state patronage were used to control votes. Bribery was more frequently used, and the wretched system of the open ballot boxes made intimidation of voters and "stuffing" of the boxes not only possible, but quite common. The political products of democracy were as yet of the crudest kind, and it required years to sift out the good and to reject the less perfect.

New popular interest in the chief executive.

Mace, *Manual*, 192–196.

Ford, *Amer. Politics*, chap. XV.

174. **The Presidency made Democratic.** — Strange as it may seem to us now, the presidential elections before 1824 were attended with little excitement or even interest. So accustomed had the people become to having their chief magistrate selected for them that they made no effort to overthrow the "Virginia dynasty" and the custom by which the former Secretary of State became President. Such a system would do very well for England or the United States as long as it was satisfied with colonialism, but democracy demanded that the President be its representative. The change from the old method to the new may be illustrated

by comparing the elections of 1820 and 1828. In 1820 there was no opposition to President Monroe in spite of the tremendous agitation over the Missouri question, and the vote polled in some states was absurdly light. In 1828 Jackson had been nominated by the people through the legislatures, as the convention had not yet been devised for the purpose. The vote was incomparably greater than in 1820, and much more than double that of 1824. In later elections the democratic influences were the predominant ones both in choosing the leader and in deciding the election.

President gains in power.

Cf. Mace, *Manual*, 196–201.

175. Results of the Change in the Executive. — The transformation of the presidency by bringing the President close to the people had two important results. In the first place it greatly increased the power of the executive. Our chief magistrate is not a very powerful official in time of peace, and the influence exerted by Washington and Jefferson had been entirely lost by their successors. Jackson, relying on popular support, restored both the power and the influence of the President. He used the veto fearlessly, met Congress squarely on the issue of the bank, and then appealed to the masses to justify his actions. In other matters he acted with vigor if not with skill. To him not precedent but the wishes of the people determined the constitutionality of national law and of executive action.

The spoils system.

Wilson, *Division and Reunion*, §§ 14–19.

In the second place, democracy introduced into the national government its favorite plan of short terms and rotation in office; in short, representation of the people in the administration of affairs. This quickly degenerated into the "spoils system," which has done so much to render all of our governments inefficient. Yet it was not only the legitimate but the necessary product of democracy.

Practical nullification.

Von Holst, *Const'l Hist.*, I, 452–458.

176. The Cherokee Case. — Two of the most important political questions affecting nationality that came up between 1830 and 1840 dealt directly with the doctrine of nullification. The first of these originated in an effort of the state of Georgia to control the lands of the Indian tribes within

Burgess, *Middle Period*, 210–220.

its borders. During the controversy the legislature passed a law extending the jurisdiction of the state over the territory occupied by the Cherokees. The Cherokees at length appealed to the Supreme Court of the United States, but the writs of error addressed by the court to the state requiring the government of Georgia to show cause why certain persons should not be released, were completely ignored. Late in 1831, in the case of *Worcester* v. *Georgia*, the court declared the Georgia law just mentioned to be null and void. Nevertheless, the state proceeded to enforce the law while President Jackson, whose sympathies were naturally not with the Indians, but who was legally bound to execute the decree of the court, refused to interfere, declaring, it is said, "John Marshall has pronounced his judgment, let him enforce it if he can." This actual nullification by a state of the national law did much to counteract the nationalism created by previous decisions of the court. Upon the court itself its effect was wide-reaching, and with the death of Marshall in 1835, and the increased number of judges in 1837, democracy united with states rights to greatly weaken the judiciary.

Protest against tariffs before 1832.

Burgess, *Middle Period*, 170–182.

177. **Nullification of the Tariff.** — The results of the tariff of 1816 were disappointing to the South; and as cotton occupied a less important place in those of 1824 and 1828, many of the Southern states, especially South Carolina, felt themselves distinctly aggrieved by these "sectional laws." Five legislatures protested against the tariff of 1828, and South Carolina adopted Calhoun's "Exposition" declaring that the states because of their sovereignty had the right to veto national laws, and to interpose in order that the central government should be forced "to abandon an unconstitutional power."

Nullification by South Carolina.

Mace, *Manual*, 211–214.

As the tariff of 1832 did not remedy the defects pointed out by South Carolina, that state immediately met in convention and declared the tariffs of 1828 and 1832 null and void, giving an elaborate argument for the stand taken, and prohibited the payment of duties after February 1, 1833.

Jackson disliked the South Carolina leaders as much as he did the Indians, and assumed an uncompromising attitude. He declared that the object of the nullifiers was disunion, and prepared to enforce the laws; but rather than risk a conflict, Congress passed a tariff that was avowedly non-protectionist, and South Carolina repealed its nullification ordinance (1833). It may be questioned whether the state had not made good its claim to nullify a law of all the states by armed interposition.

Wilson, *Division and Reunion*, §§ 30, 31, 33.

Johnston, in Lalor, II, 1050–1055.

178. **Other Political Questions.** — While nullification was trying to oppose the growth of national influence by an assertion of state rights, the people were given clearer ideas of the character and significance of the claims of national and state sovereignty in the Webster-Hayne debate (1830). Owing to the conditions existing at the time, the representative of New England deserted the old anti-national position of 1803, 1806, and 1814, coming out squarely for the national theory of the Constitution, which his arguments did much to impress upon the country, especially the North. On the other hand, Hayne now stood for the doctrine of the past, and did much to identify the cause of the South with the idea of state sovereignty and its necessary corollary of a compact between the states.

The Webster-Hayne debate.

Channing, § 181.

Wilson, *ibid.*, §§ 23, 24.

Although the United States Bank was the most national institution of its day, the opposition of Jackson, which in the end destroyed it, was based not on the fact that it was national, but that it was anti-democratic. Yet his action regarding the bank helped democracy less than it injured nationality. In the placing of the deposits with state banks, and in the distribution of the surplus Jackson undoubtedly weakened national authority, as the expenditure of the same sums directly by the central government would not only have given it prestige, but would have led to a fuller and better use of the "implied" powers than were involved in many cases where he exercised his personal authority.

The United States Bank.

Wilson, *ibid.*, 34–42.

Burgess, *Middle Period*, chaps. IX, XII.

179. **Influences Favorable to Nationality: the New States.** — It is interesting to notice that so far in our history, except

Attitude of the West toward the national government.

in the disputes arising over the navigation of the Mississippi River, all of the tendencies toward disunion and most of those favorable to state sovereignty came from the older commonwealths. The reason for this is evident. The old states looked upon the Union as their creation; the new ones as their creator. Nearly all of the territory formed into states after 1789 had at some time been under the absolute control of the national government. When these new states were admitted to the Union, the old states apparently had nothing to do with it; Congress passed the enabling act, Congress imposed conditions, if such there were. They had no local traditions, no revolutionary claim to sovereignty, no institutions productive of either particularism or sectionalism. They favored a strong national government for foreign affairs and for internal improvements, and only in the few matters directly antagonistic to their interests did they disapprove of national authority.

Thorpe, *Const'l Hist.*, I, 264–266.

Foreigners favored the nation rather than the states.

180. **Foreign Immigration.** — While the interstate migrations were breaking down commonwealth lines in the West, the influx of immigrants from all parts of Europe, especially Great Britain and Germany, was strengthening the national sentiment everywhere. They cared nothing for the states — they had transferred their allegiance to the United States. Their influence began to be felt as early as 1840, but it was only after the great migration following 1848 that they became a positive force in this country. On account of slavery in the South, these immigrants avoided competition with this form of labor, and with few exceptions settled in the North. As they were industrious and thrifty, they increased for that section its very decided advantages in population, wealth, and productive power. Had it been impossible for the United States to assimilate so large a body of foreigners, they would have retained all their old national characteristics of race, language, and customs, — but this was nowhere the case, — and even if the first generation failed to become truly American, it was never so with the second. Directly and indirectly they were there-

fore a great help in developing a national sentiment in the North.

State lines disappearing in commerce.

181. Improved Means of Communication. — It is not too much to say that no large representative state can continue to exist with poor means of communication. The invention of the steamboat had helped to solve the problem of communication in the West, but the railway has been a much greater unifying factor in our history. It not only has enabled persons to travel with rapidity and ease, but it has created channels for trade which has done much to obliterate state lines in commerce. It has so cheapened the cost of marketing products as almost to revolutionize industry. The first railways were built just before Jackson's inauguration, and by 1840 nearly three thousand miles of line had been completed. From that time on progress was rapid. Following in its steps was the telegraph, which was to bring the remotest parts of the country into immediate communication. With these material advantages it was impossible for separateness and sectionalism to thrive.

Slavery becomes the important question.

182. Phases of Later Democratic Development (1830–1860). — After 1830 democracy continued to develop, though perhaps less rapidly than in the preceding decade. Its growth did not cease with 1845, has not in fact ceased yet, but after that date it was overshadowed by the conflict concerning slavery. The attempt is made in the following paragraphs to show some of the results reached between the inaugurations of Jackson and Lincoln. It will be noticed that almost all of these belong to the sphere of the states.

Constitutions continue to grow democratic.

183. Changes in the State Constitutions after 1830. — During the period from 1830 to 1860 new constitutions were constantly being adopted at the rate of about one a year, and the new constitution of any state was affected almost as much by those recently made by its neighbors as by the one previously in use in that particular state. Practically all of these were proposed by conventions called for the purpose, and were ratified by popular vote. The influence of democracy is observable along several lines. The constitutions

Thorpe, *Const'l Hist.*, 395–435 (esp. 419–422), 445, 446.

left less to the discretion of the legislature, and laws that were formerly enacted by that body were now placed in the Constitution, which becomes more like a code of laws. Changes were made in both the central and local governments, which gave the people a better control over the whole system. New constitutional laws recognized the fact that the state must give greater legal rights to its weaker classes, and provide for the education of its youth and the care of its unfortunates.

The governor.

Schouler, *Const'l Studies*, 267–282.

184. The State Executive and Legislative Branches. — Most of the eighteenth-century governors and their assistants were chosen by legislatures. Before 1830 the practice had become universal to have the governor elected by the people, but the secretaries of state and other administrative officials were still chosen as before. As democracy was naturally opposed to the appointive system, practically all of these assistants of the governor in time came to be selected by the people.

The legislature; composition.

Schouler, *Const'l Studies*, 249–265.

Thorpe, *Const'l Hist.*, 408–416.

In the composition and in the powers of the legislatures, democracy produced significant changes. During the early part of the century the members of the upper house usually represented counties and those of the lower towns, but in neither house was the apportionment really based upon population. After many experiments and hard fought contests between the cities and the country, they began to divide the states into districts as equal as possible in population, but it was not until after 1850 that the states finally abandoned the old system and adopted the new and more democratic one.

Changes in legislative powers.

Thorpe, *ibid.*, II, 416–418.

Not willing to trust even its own representatives, democracy introduced into the new constitutions provisions which made special legislation impossible in certain enumerated cases, and forbade all legislation on certain subjects. But it went farther and compelled the legislatures to pass laws and appropriate money to carry out certain provisions of the Constitution. This decline of the legislature in importance gradually led to the adoption of biennial sessions, at

first of unlimited duration, but later restricted to ninety, sixty, or even forty days.

185. **The Judiciary.** — The judiciary did not escape the general movement which made appointive offices elective and shortened the terms of the officials. Before 1800 all of the states appointed all judges, state or local, and allowed them to hold office during good behavior. The first judges to be elected by the people were the justices of the peace, who were either township or county officials, formerly appointed by the state governor. In 1802 Ohio placed their election in the hands of the voters in the district over which the justice had jurisdiction. The rest of the Northwest did the same as it became settled; but the South was even slower than the East in adopting this plan. Yet strangely enough it was Georgia that in 1818 first had her state judges chosen by popular vote, and the South was the first to follow her example. In time most of the states, except those in conservative New England or some parts of the South, changed from the appointive to the elective system, with tenure varying from one year to twelve. The popular demand was very strong, and would undoubtedly sooner or later have altered the term of the federal judges, but for the inflexibility of the national constitution.

Popular election and terms introduced.

Eaton, in Lalor, II, 643–645.

Schouler, *ibid.*, 283–292.

Thorpe, *ibid.*, II, 458–476.

The results of these changes are what might have been expected. The standard of ability for judges, none too high before, was appreciably lowered, as most of the dignity of the office was gone, and as legal fitness was not the first requirement of candidates. This naturally showed itself in the application of the law, but the deteriorating effect was partially counteracted by the unusually high character of the bar, which has at all times in our history called forth favorable comments from competent observers. The evil influences of brief tenure were finally realized, and since 1845 most of the states that had gone farthest have increased the length of the judges' term.

Injury to the courts.

186. **Increased State Activity: Finance.** — It is a commonplace nowadays that democracies are extravagant. Whatever

Extravagance of early democracy.

Thorpe, *ibid.*, II, 429–446.

they have been since, the first ones certainly were. The great democratic wave of the thirties happened to coincide with a period of the wildest speculation. The result upon the increased expenditure of the Western states may be imagined. Wild cat banks were created by the score, millions of dollars were voted for improvements in a wilderness, and state aid was given to schemes whose only recommendation was that they promised to develop the country.

Financial history of Michigan (1835–1850).

Cooley, *Michigan*, chaps. XIII, XIV.

Suppose we take the case of Michigan. In 1837 the state replaced the old method of creating banks through special acts by a more truly democratic one of having incorporation take place under general law. But in the troublous times that followed only the most careful administration of such a law could have saved the state from disaster, and administration is not even now democracy's strong point. At the same session (1837) the legislature "authorized the governor to borrow five millions of dollars for railroads, canals, and other improvements." Quite an investment for a frontier state with a population barely one hundred and fifty thousand in days when official salaries of $1000 were none too common. A little later the banks were allowed to suspend specie payment, but were permitted to continue issuing paper money. This they did till the state was flooded with the depreciated currency of forty-nine banks. The effort to give state aid to railroads ended in much the same way. It was found almost impossible to float the bonds, and after a series of misfortunes the projected lines were sold at a serious loss. In 1850 the new state constitution prohibited subscription in the stock of any company. Democracy had learned some hard lessons in the school of experience.

Development of public school systems.

McMaster, *United States*, V, chap. XLIX.

187. Education.—The same causes which gave the people so much power in political affairs were influential in the extension of systems of free education. Not only did people begin to realize that it was necessary for citizens to be trained for their civic duties, but they felt that the state owed every person the opportunity of a good education. Under the

lead of Mann and Barnard, New England built upon her old foundation of belief in common schools a far more perfect free system than had yet existed. In the West, democracy insisted upon education as a right. As all of these states were once parts of the public domain, each had an educational fund of one section, or after 1848 of two sections, in each township. This greatly lightened the burden of the local school taxes, and thus gave the West decided advantages over the East. But it did more. At each schoolhouse the voters of the township gathered to discuss school matters and fix the school tax. Soon they insisted upon looking after other subjects of local interest, and around the schoolhouse there grew up a real local self-government which was very favorable to the further spread of democracy.

The school district and local government.

Bemis, in *J. H. U. S.*, I, v.

188. Equalization of Rights. — It was inevitable that sooner or later class privileges should disappear. We have already noticed that religious qualifications for the franchise had been the first to go, and that property was not required of voters to any extent. Laws of inheritance no longer gave the eldest son a special share. Imprisonment for debt had been gradually abolished after 1776, and was practically completed in 1840. The newer states were beginning to make homesteads exempt from seizure by creditors. Through constitutional provision or statute some states were following the example of the national government which in 1840 made ten hours a day's labor for its employees, but most changes of this character came later, after the Civil War. In some cases, the constitutions expressly stated that married women might hold property in their own names, and gave them certain other specific rights before the law and in inheritance. The movement in favor of equalization was almost universal though less pronounced in the older and more conservative sections.

Abolition of class privileges.

Cf. Cleveland, *Democracy*, 359–363, 379–385.

189. Local Government in Towns and Counties. — In local government the changes produced by democracy made for both better and worse government; better in that the sphere of the cities, towns, and counties was so much more

Democratic changes.

Cf. Thorpe, *Const'l Hist.*, II, 469–475.

Cf. Cleveland, *Democracy*, 222–227.

clearly defined and greatly enlarged; for worse because, especially in the cities, the control of the governmental machinery fell into the hands of those least fitted to run it.

During colonial times all of the counties had been mere subdivisions of the colonies created for judicial or administrative purposes. Over them the colonial government had absolute control, appointing all officials and changing the boundaries of the counties or the location of the county seat at will. No change had been made in this system by the older states, and the Western ones had adopted the form of local government in use in the states from which its inhabitants had emigrated, modified to some extent by different economic conditions. But as time went on the new states began to introduce changes which made the local governments much more popular in character. The election of county justices, sheriffs, and other officials was given to the people of the counties. The jurisdiction of the justices was enlarged even when they were township officers, and county courts with still greater powers were often permitted. These changes were by no means confined to the West, though more fully developed in that section. They tended to make the local government not only more democratic, but much more vital.

Change to popular rule followed by misgovernment.

Fairlie, in *A Municipal Programme*, 11–17.

190. Municipal Government. — Before 1820 cities were so few and small that little attention was paid to them. There was a complete lack of uniformity in their government, and colonial differences and customs had been continued. However, the mayors and treasurers, police officials and judges were commonly appointed by the state governors. As in everything else, appointment gave place to election and by the people of the municipality. This gave them almost complete self-government with very little interference from the legislatures. It was a very excellent application of democratic principles, but, unfortunately, the cities showed most of the faults with few of the excellencies possible in popular rule. In them the "spoils" system was brought nearest perfection, and "boss" rule was most easily developed.

This demoralizing state of affairs was probably due to two things. (1) The growth of the cities was quite rapid, and a large part of the new population was foreign. As suffrage was universal, and a declared intention to become a citizen often gave an ignorant immigrant a vote, the elections were decided by an element easily led and corrupted. (2) The rapid growth made extensive improvements necessary. This expenditure acted as a temptation to certain of the lower classes to take part in city government, and as the money was expended by these persons, it tended to increase the evils already existing. So democracy in the cities came near being mob rule, till at length the cities appealed to the state legislatures for help. But legislative interference could not undo what was already accomplished, and left the cities with two masters instead of one.

Reaction against extreme forms of democracy before 1860.

The beginnings of reaction against the extreme results of democracy appeared not only in the cities, but all over the country before 1860. There was already a marked tendency to lengthen terms of office, to grant the franchise less freely, and by checks and devices to protect the people from themselves.

QUESTIONS AND REFERENCES

The New Nationality (§§ 162–169)

a. On the Supreme Court consult Johnston's article in Lalor, on the 'Judiciary'; Magruder's *Marshall*, chap. X; Willoughby's *Supreme Court;* and Channing and Hart's *Guide*, § 175. The texts of the decisions are given in Thayer's *Cases in Constitutional Law.* Consult table of cases (p. xi) under those mentioned, and *Fletcher* v. *Peck*, *Cohens* v. *Virginia*, *Gibbons* v. *Ogden.*

1. In what ways did the War of 1812 affect nationality through (*a*) influencing powers of the national government, (*b*) making us economically independent, and (*c*) unifying public sentiment?

2. Was the tariff of 1816 intended to be temporary or permanent? Was it possible to gain the objects desired by a temporary tariff?

3. Why was the feeling toward a United States bank different in 1811 and in 1816? Was the bank chiefly valuable as a governmental or a nationalizing institution?

4. What justification do you find in the Constitution for internal improvements? Have we internal improvements at the present? If so, what?

5. Was slavery principally a political or an economic issue? Was slavery more clearly allied to state sovereignty, to sectionalism, or to nationalism?

6. Compare the advantages won by each section in the final compromise. Which side won most? What were the constitutional results of the compromises? the political results?

7. Just how did the decisions of the Supreme Court strengthen nationality? Was the court sufficiently conservative? Would its permanent influence have been greater by following a different policy? If so, what policy?

8. What was the purpose of the Holy Alliance? What had been done by the Alliance in Europe? What was the attitude of England toward the Alliance before 1822? after 1822? What was the relation of the Alliance and Russia in Alaska to the Monroe Doctrine?

Political Reorganization on a Democratic Basis (§§ 170–175)

1. What part has the frontier played in our history?

2. Can you find any good reasons for limiting the franchise to men of property? State advantages and the disadvantages of the union of Church and State.

3. Did the Missouri question have anything special to do with the reaction in favor of particularism after 1820? Prove your answer. Did it affect the new organization of parties? Compare the Whigs with the Federalists as to constitutional views, policies, social opinions, and section from which strength was derived.

4. Could political class rule have been abolished except through the convention and "machine" system? Were the latter to be preferred to the former? Give reasons for your answer.

5. With the presidents of most influence, what have been the sources of that influence? To what extent was it due to their constitutional powers (and to which ones)? to the feelings of the people? to party leadership? etc.

6. Did the "spoils" system get the strongest hold on the national, the state, or the local government? State its advantages; its disadvantages.

Questions affecting Nationality (§§ 176–181)

a. Macdonald, in his *Documents*, gives extracts from Webster's and Hayne's speeches on Foot's Resolutions. Benton's *Thirty Years'*

View gives a good brief record of the debate. Criticisms of the speeches are given in Lodge's *Webster*.

b. Consult on nullification by South Carolina the following: Schouler, IV, 85–111; Sumner's *Jackson*, chap. X; Von Holst, *Constitutional History*, I, 459–505; Burgess, *Middle Period*, 220–241; Powell, *Nullification and Secession*, chap. VI; Houston, *Nullification in South Carolina*.

1. Can the judiciary enforce its decree without the help of the executive? how? Why did it not do that in the *Cherokee Case?*

2. Compare the Nullification Act of South Carolina with Jackson's appeal. Which gives the truer view of the Union? the correct interpretation of the tariff? Would it have been better to have fought out the contest at that time? What was the effect of the compromise?

3. What is the difference in principle between the tariffs of 1816, 1828, and 1832? in details?

4. What was the influence of the new states between 1830 and 1860 as shown by the number of presidents they furnished, measures proposed and carried by them in Congress, and state constitutional changes adopted first by them, and then accepted elsewhere?

5. Had the United States Bank failed to establish a "uniform and sound currency," as Jackson claimed? Did the election of 1832 justify Jackson's remark that the bank "might make us tremble for the purity of our elections in times of peace"?

6. Compare the race elements of immigrants before 1850; between 1850 and 1860. Which predominated? Where did most of the English settle? the Germans? the Irish?

Phases of Later Democratic Development (§§ 182–190)

a. For the requirements of voters and office-holders compare the tables in Thorpe, *Constitutional History*, II, 408–412, (state senators and representatives); 423, 424, (governors); 476–479, (electors); consult Appendix F and Bradford's *Lessons of Popular Government*, chap. I.

1. To what extent was the appointive system retained after 1830? Have the liberties of the people ever been threatened by long terms of judges?

2. If both houses of the legislature were on the same basis, why was it best to retain both? Name all the checks you can which were placed by the people upon their representatives.

3. Did internal improvements belong rather to the states or the

nation? What investments in internal improvements by the states have proved successful? What ones failures? Explain why, if possible, in all cases.

4. To what extent did democracy before 1860 produce equality in political and in social matters? in economic relations? in other ways? Did democracy owe more to equality, or equality more to democracy?

CHAPTER VIII

NATIONALITY AND SLAVERY (1845–1877)

General References

Mace, *Method in History*, 206–254. To 1865.
Johnston, *American Politics*, chaps. XVI–XXIII.
Channing, *Student's History*, 443–573.
Wilson, *Division and Reunion*, 116–287. Excellent.
Burgess, *Middle Period*, 39–60, 242–277, 289–474. The most valuable book to 1858. Burgess, *Civil War and Reconstruction.* (In preparation.)
Curtis, *Constitutional History*, II, 191–440.
Dunning, *Civil War and Reconstruction.* By far the best book yet published.
Powell, *Nullification and Secession in the United States.*
Macdonald, *Select Documents* (1776–1865), 343–455.
Foster, *Commentaries on the Constitution*, 110–268.
Larned, under the United States.
American Orations, III, IV.
McPherson, *Political History of Reconstruction.* Indispensable for reference.
Hurd, *Theory of Our National Existence.*
Schouler, *United States*, IV–VI. To 1865.
Rhodes, *United States.* 4 volumes. To 1865.
Nicholay and Hay, *Abraham Lincoln.* 10 volumes.
Davis, *Rise and Fall of the Confederate Government.* 2 volumes. Personal accounts of political events.
Stephens, *Constitutional View of the War between the States.* 2 volumes.
McCulloch, *Men and Measures of Half a Century.*
Blaine, *Twenty Years in Congress.* 2 volumes.
Cox, *Three Decades of Federal Legislation.*
Sherman, *Recollections of Forty Years.* Volume I.
Johnston, in Lalor, under Principal Topics.
Among the numerous biographies may be mentioned: Morse's *Lin-*

coln, 2 volumes; Brooks's *Lincoln;* McLaughlin's *Cass;* Lathrop's *Seward;* Hart's *Chase;* McCall's *Stevens; Lives of Clay, Webster,* and *Calhoun*, as in chap. VII.

Conditions in the South favor slavery.

191. Slavery and the South. — The last period of the national era before 1877 is concerned principally with questions arising out of slavery. This system, which had once been almost universal in this country, had gradually been superseded at the North by free labor. The reasons for this are typographical, economic, and social. Such was the character of soil and climate that the occupations prevalent in the Northern states could not use slave labor to advantage. The humanitarian sentiment which was the direct outgrowth of the revolutionary ideas concerning the rights of man succeeded in abolishing what little slavery prevailed. At the South, on the contrary, emancipation had made little progress before the invention of the cotton gin (1793), and after that time the demand for slave labor was great and increasing. For these reasons, slavery was almost of necessity anti-national, as it could not hope to regain the North, when a world-wide movement was abolishing slavery everywhere else among civilized people. It was therefore sectional, and it gave to the section that had nourished it a peculiar character. It did more than dominate the Southern states: it had absorbed the life of the South. We shall see later what the effects of that absorption were; but we find in all matters of a political nature that the South more and more came to look at everything from the standpoint of slavery. All other interests were subordinated to this one till, in politics, the effect of any measure upon slavery was the first and the last thing considered by Southern statesmen.

Slavery absorbs the life of the South.

Slavery as a state institution.

192. Slavery in the States before 1845. — It had always been a settled question that in the parts of the Union where slavery existed, slavery was to be left entirely to the states. In the discussions of the convention of 1787, it was never slavery in United States territory that caused dispute. The three-fifths compromise, the provisions for fugitive slaves,

and the regulation regarding the slave trade were not, in a true sense, national questions, *i.e.* they dealt rather with slavery as a state institution, and sought to place it as far as possible from the control of the central government. In regard to them Professor Burgess says: "These were most momentous provisions. They secured slave property, increased slave property, and made slavery a vast political power in the hands of the slave masters. There is no doubt that the clock of the ages was turned back full half a century by the constitution of 1787." The influence of these arrangements made by the convention, combined with the increased value of slave labor due to the cotton gin, made slavery the most permanent institution of the South. As a rule, state laws regarding the treatment of slaves became more lenient; but emancipation, which was practically completed at the North by 1800, never received much encouragement. What little feeling in favor of emancipation existed before 1830 in slave states, disappeared as individuals and classes at the North began agitation for the freedom of the slaves. On the other hand, as the antislavery sentiment spread in the non-slaveholding section, the free states enacted laws protesting against the enforcement of the fugitive slave act of 1793, now all but a dead letter. All of these things tended to widen the gulf between the North and the South.

Wilson, *Division and Reunion*, chap. V.

Burgess, *Middle Period*, 39–54.

Von Holst, *Const'l Hist.*, 273–339.

193. **Slavery in National Territory.** — Before 1845 slavery in the territories had been regulated entirely by Congress. As early as 1784 Jefferson had sought to have all of our Western lands declared free; but when the proposed Ordinance of 1784 became the Ordinance of 1787 (§ 100), it was restricted to the territory northwest of the Ohio. To give it validity this ordinance was reënacted by the first Congress under the Constitution, and reaffirmed twenty years later when that body was petitioned to rescind it. The same Congress (1790) entered into a compact with some of the Southern states not to exclude slavery in the territories south of Kentucky. When we acquired Louisi-

Northwest and Southwest territories.

Von Holst, *ibid.*, 273–301.

Louisiana.

Burgess, *ibid.*, 54–58.

ana, we promised to recognize the right of the inhabitants to their property in slaves. As no further action was taken by Congress, that whole territory was open to slavery before the institution was, in 1820, "forever prohibited" above 36° 30′. This compromise was really violated when a strip covering over a thousand square miles was added to Missouri in 1837.

District of Columbia.

Burgess, *ibid.*, 251–264.

The District of Columbia had recognized slavery from the first. No effort was made to change this state of affairs till, during the thirties, abolition societies had petitioned Congress to abolish both the slave trade and slavery in the district. No attention was paid to these at first, but the House of Representatives became so annoyed that they foolishly denied the right of a petitioner to be heard. Instead of silencing agitation, this gave the abolitionists legal ground to stand on.

Slavery drives the sections apart.

Mace, *Methods*, 216–219.

194. **Increase of Sectionalism.** — While there had been a growing antagonism between the North and the South over the slavery issue, permanent sectionalization did not really begin until after 1830. The Missouri difficulty had caused a fierce but brief conflict, chiefly significant as showing the inevitableness of the contest between freedom and slavery, which it could not decide, but did postpone. With the new antislavery agitation, however, the case was different. The South had already come to identify itself pretty closely with slavery, and viewed all suggestions of emancipation as a serious danger to itself. It proceeded at once to check everything that tended in any way to hinder the growth of slavery and began to look about for new fields in which to develop further. The opportunity was at hand, for the new state of Texas had established its independence of Mexico, had made slavery one of its institutions, and was anxious to enter the Union. The thought of annexing territory that might give to slavery four new states did much to strengthen the antislavery feeling at the North, and created a widespread opposition to the Mexican War, whose principal result would naturally be to

increase the power of a relic of past barbarism. We cannot say that either the North or the South was really to blame for this increase of sectionalism. It was nothing more than an evidence of the fact that no nation can exist with two radically different and antagonistic economic institutions side by side; that the Union could not "permanently endure, half slave and half free."

Increase of territory (1846–1848).

195. The Compromise of 1850. — As a result of our treaties with England and Mexico, in 1846 and 1848, respectively, our national domain was increased by over a million square miles, extending from the ridges of the Rocky Mountains to the Pacific, and covering sixteen degrees of latitude. The northern quarter of this region was, in 1848, organized as Oregon territory, slavery being excluded.

Features of the compromise.

Channing, §§ 306–308.

Wilson, *Division and Reunion*, §§ 83–87.

Johnston, in Lalor, I, 552–553.

Burgess, *Middle Period*, 345–364.

Macdonald, *Documents*, 378–390.

That same year the discovery of gold in California drew to the neighborhood of the Golden Gate a population of over one hundred thousand within a short period. Naturally, few of these were slave owners; and when, therefore, California applied for admission to the Union, it was as a free state. To the leaders of the slavery extension movement this was a serious blow, as California touched the southern boundary of the United States. Under the circumstances, they did the best they could, and agreed, in the Compromise of 1850, to admit California, and abolish the slave trade in the District of Columbia, if all the rest of the territory acquired from Mexico should be allowed to choose slavery as the parts became states. By the same compromise, Congress purchased the claim of Texas, which had refused to be divided, to a large area west of its present boundaries, and passed a fugitive slave act much more drastic in its methods than that of 1793.

Effect of the new fugitive slave law.

Burgess, *ibid.*, 365–379.

The enforcement of the fugitive slave act did more to make the North antislavery than all other political measures combined. The sight of negroes, denied the protection of Northern state laws or of an opportunity to prove their freedom, quickened a sense of the injustice of human

bondage, and seemed proof that the South did not intend to stop at any means of fostering slavery. This feeling loosened the ties of affection for the Whig party, whose chief strength lay in the free states, preparing the way for a new reorganization of political parties (§ 537).

Missouri Compromise repealed.

Johnston, in Lalor, II, 667–670.

Macdonald, *Documents*, 395–405.

Burgess, *Middle Period*, chap. XIX.

196. The Kansas-Nebraska Bill (1854). — Just at this juncture, democracy came forward with what it believed to be the solution of the slavery question. It said, let the choice of slavery or no-slavery be left to the new states on entrance to the Union. This will be in accordance with the principles of self-government and with natural law, as the system best fitted for the conditions will survive. This certainly seemed reasonable; but, in order to make popular sovereignty possible, the Kansas-Nebraska Bill, in which Douglas embodied these ideas, found it necessary to set aside the Missouri Compromise. To a large part of the North this compromise was as sacred as the Constitution itself, and popular sovereignty was no justification for its repeal. Slavery seemed to have invaded their rights, and the supposed invasion produced a unanimity of antislavery sentiment almost as great as that for slavery at the South. The Whig party, which had pursued a temporizing policy, gave way to new antislavery organizations, the larger of which grew into the Republican party. The Democratic party, always strong at the South, was, at the same time, gradually transformed into a pro-slavery body. The election of 1856 shows how much wider the gulf between the sections had become. In spite of the efforts of politicians, platforms dealt with sectional questions, and the candidates were sectional in their thought, if not in their residence.

Effect of the repeal.

The struggle for Kansas.

Wilson, *Division and Reunion*, §§ 91, 98.

The application of the ideas of popular sovereignty to the case of Kansas was extremely difficult because of civil disorder, but the free state men had the advantages of superior organization and the greater mobility of free labor. The contest was really one-sided, and proved to the South that slavery could not compete with free labor on equal terms.

197. The Dred Scott Decision. — The final attempt of slavery to settle the great difficulty to its own satisfaction was made in 1857, when the Supreme Court rendered its decision in the *Dred Scott Case*. Dred Scott was a negro slave who had been carried from Missouri to Wisconsin territory (afterward Minnesota), and who, after his return to Missouri, had sued for his freedom. The court decided that although Dred Scott had been taken to free soil, on his return to Missouri his *status* was determined by Missouri law. But Chief Justice Taney and some of his associates went further. In an elaborate argument the chief justice gave this opinion: (1) Dred Scott is not a citizen and cannot become so. (2) The central government has no right to acquire or govern territory except as the agent of the states. If it is the agent of all the states, it does not possess unlimited power over the territory, but is limited by the Constitution to protect personal and property rights. He held that the right of property in slaves was one of which no person could be deprived "without due process of law"; that, consequently, "the act of Congress [Missouri Compromise] which prohibited a citizen from holding and owning property of this kind in the territory of the United States north of the line therein mentioned [36° 30′], is not warranted by the Constitution, and is therefore void." As this view was indorsed by the majority of the justices in separate opinions, it was accepted as the decision of the court that slavery could not be prohibited by Congress in any of the national territory, and that the exclusion or non-exclusion of slavery must be decided for each state by itself on its entrance to the Union.

The Supreme Court decides in favor of slavery.

Johnston, in Lalor, I, 838–841.

Burgess, *ibid.*, chap. XXI.

Macdonald, *Documents*, 416–435.

This was essentially a new doctrine, and came as near to declaring slavery national as was possible, on the basis of "state sovereignty." But it was the view held by a decided minority of the nation. The majority not only refused to accept it, but continued to gain greatly in numbers and in determination. The court had done just what it wished to avoid. The chasm between the sections had been widened,

The contest over slavery becomes inevitable.

the irrepressibility of the conflict between the institution of slavery and the system of free labor was becoming more and more apparent. One step more, and all must see that the Union must become all free or all slave.

Election of 1860 leads to secession.

Channing, §§ 326–331.

Johnston, in Lalor, III, 693–702.

198. Secession. — The election of 1860 was the beginning of the end. Slavery had rent asunder all of the great national churches some time before, it had caused a split in the Whig party, and, finally, in 1860, separated the Democratic party into a northern and a southern wing. The loyalty to the nation and the compromising of the politicians had alone been able to sustain the Union intact. With the election of Lincoln, on a platform favoring the total exclusion of slavery from the territories, the South gave up hope of future success except by secession. South Carolina immediately called a constitutional convention, which, on the 20th of December, 1860, repealed the act of 1788 ratifying the Constitution of the United States. The reasons given for this action were set forth as follows: the history of the formation of the Union from 1776 to 1790 was given to prove the reality of state sovereignty and the compact theory of the Constitution. This compact was said to be violated in two ways: first by the "personal liberty" laws of certain enumerated states at the North, which had nullified the fugitive slave acts; and second by the threatened danger to slavery as a state institution in the election of Lincoln. The Gulf states immediately followed South Carolina's example, for the reason that they believed better terms could be made with the North if they were out of the Union. President Buchanan thought secession illegal, but denied that he had the right to coerce a state, so nothing was done. Compromise failed, hostilities commenced, the central Southern states threw in their lot with the South, and the deadly struggle began.

Comparative equality of the sections (1776).

199. The South and the North in 1776. — The reasons for the final result can perhaps best be shown by comparing the North and the South in 1776 and in 1861.

As has already been stated, slavery had absorbed the life of the South. The significance of this may not be at once apparent. When the colonies had broken away from Great Britain, the states in which slavery was prominent were at least the equals in most respects of the others. All were devoted almost entirely to the pursuit of agriculture. What little commerce there was benefited the South as much as the North, because the agricultural products of the former were better suited to exportation. In the carrying trade, in her local self-government, and in some kinds of manufacture, New England had the advantage of the other sections; but to counterbalance these the South had her large class of slaveholders, whose training and leisure especially fitted them to be the leaders in all national movements.

Slavery interfered with development of the South.

Wright, *Industrial Evolution*, chap. XII.

Von Holst, *Const'l Hist.*, I, 340–356.

200. **The South (1776–1861).** — Politically, industrially, and socially the world had made great strides between 1776 and 1860. The United States was in the van of this movement. But the character of the development had been very different at the North and at the South. Slavery had gained a stronger hold in the Southern states, so the system of class separation was no less marked in 1860 than in 1776. Democracy, with its ideal of equality, was the important product of the civilized world during the first half of this century; but what place could democracy occupy in a section controlled by slavery? The South had felt the effects of the movement, but had had little part in it. Her politics were dominated in 1860, as they were in 1776, by the slaveholding landowners. This made adult manhood suffrage less common and a far less vital force than at the North. In her political methods as well, the South had retained eighteenth-century ways. For example, the South clung to the older theory of state sovereignty, and that the Union was a *Staatenbund*. As late as 1860 South Carolina had chosen her presidential electors through the state legislature, and only one of the ordinances of secession was submitted to the voters for ratification.

Influence of slavery on industry.

If slavery had exerted an unfavorable influence on society and politics alone, the South might still have hoped for success. But it had been like a huge octopus, which had seized upon everything, and from that had crushed all life. It had prevented popular education, hindered the extension of every means of communication, and, more than all else, had made the development of material resources impossible. The South was not less rich in soil or mineral resources than the North, but slave labor could be used only for the coarsest kind of work; yet, at the same time, competition by free labor was not possible. On this account agriculture was the only occupation in 1861, as in 1776; and this agriculture meant cultivation on a large scale, with crude and wasteful methods. Manufacture, which required skilled labor, was out of the question, as the slave could not be depended upon, and free labor shunned the South. Internal trade under the conditions was very limited. The case of the South was what scientists would call one of "arrested development," and its chief cause was slavery.

Progress in the North (1776–1861).

Hart, *Essays on Gov't*, 268–278, 292–298.

201. **Advantages of the North over the South.** — How different was the situation at the North. Here change had been rapid and increasing. Democracy had played havoc with the old social limitations and political restrictions. In every line of activity progress had been made from the simple to the complex. Free labor filled all things with life and vigor. There was every possible inducement for inventive genius, personal industry, and industrial management. This was productive of a spirit scorned by the South because of its petty commercial character, which had the marked disadvantage of withdrawing the ablest minds from the political arena.

All of these conditions were attractive to a numerous class of Europeans, to whom the reactionist *régime* after 1815 left no hope at home. They flocked to our shores in thousands. Before 1861 five million had come, about one-half during the previous ten years. Other things

being equal, they would have turned the scales in favor of nationality and freedom. The way the North had outstripped the South is apparent from a comparison of the two sections.

Population and congressmen (1790–1860).

In 1790 the population was the same, and the free states had five more congressmen. By 1810 the North had 300,000 more people, while its majority in the House was twenty-five. In 1840 the population of the South was seven and one-third millions, that of the North nine and three-fourths. In the House the South had 100 representatives, the North, 142. By 1860 the North had seven millions more people and two-thirds of the members of the lower house.

Comparison of the sections in 1790.

When the first census was taken in 1790, we find the sections have almost exactly the same area, about 400,000 square miles, and a difference of but seven thousand in population. The exports were a trifle over eight and a half millions at the South, and about a hundred thousand less at the North.

Comparison in 1860.

In 1860 the area of states allowing slavery was 875,743 square miles to 768,255 square miles for those that were free; but the white population of the North was 19,000,000, and of the South and the border states less than 8,000,000. The exports of the South were $230,000,000 to $105,000,000 for the North, but cotton alone amounted to $191,000,000. In imports, the North had $331,000,000 to balance $31,000,000 for the South. Its banking business was seven times as large as that of the slave states; even its farm lands were worth nearly three times as much, and the total estimated value of property at the South was less than five and a half billions, including slaves worth nearly three billions, while the property of the North was valued at eleven billions. In manufacturing a still greater difference existed, for the free states produced just ten times as much as the states that seceded, and the manufactures of New York alone exceeded those of all the slave states by a hundred millions.

Dangers threatening the Union (1861).

202. The Situation in 1861. — Nevertheless, the situation of the national government in 1861 was a precarious one. The South had practically controlled all of the departments. The North did not fully realize how much in earnest the South was. Commercialism tended to create a spirit of indifference. The disputes over the character of the Federal Union made it necessary to use authority with caution. Our credit was poorer than it had been in years,

and the fear that the Union might be dissolved almost destroyed it. Europe looked with favor upon the South, with whose leaders the governing classes were more in sympathy. But the same energy that had made the North what it was, proved itself able to deal with the situation. The nation responded nobly to the call for troops, the banks threw in their lot with the Union, the government created an army and navy, its authority gathering momentum as the war progressed. Meanwhile industry and commerce, instead of being absorbed by the war, were stimulated by it. The vast strength of a system of free labor was equal to the emergency.

Slavery the chief cause of failure.

Cf. Wilson, *Division and Reunion*, §§ 119–123.

203. **The Failure of Secession.** — The reasons why slavery failed to set up a Confederate government of its own are two kinds. The cause of most importance is, of course, slavery itself, for it showed its weakness in those very particulars in which the free system was so strong. Perhaps the greatest of the minor causes was the failure of the South to carry with it the border slave states. Less important was the inability to secure European recognition. The South had military and political leaders of great ability; she fought nobly on her own soil with the tremendous advantage of inside lines. She exhausted her resources of men and materials, using every device of absolute rule, but to no purpose. Slavery, to which she had given herself body and soul, had made defeat inevitable. But the defeat meant the release of the South from a bondage worse than that of the slave.

War increases nationality and destroys state sovereignty.

The failure of secession was accompanied by a corresponding increase of nationality. This was principally due to two things: (1) The outburst of national feeling, whose primary object was the preservation of the Union. (2) The increase of national authority, made necessary in the prosecution of the war, and intensified by the complete victory of the Union forces.

This new nationality in the period of reconstruction destroyed every vestige of secession as a legal right, and

its underlying principle, state sovereignty. In fact, nothing that had espoused the cause of slavery escaped uninjured in the terrible holocaust.

A few violations on the ground of public necessity.

Johnston, in Lalor, II, 432–434.

Dunning, *Civil War and Reconstruction*, 1–62.

Tiedeman, *Unwritten Const. of U. S.*, 83–90

204. The Constitution during the Civil War. — During this crisis it is interesting to notice the attitude of the government to the written Constitution, and of the departments to each other. A question of first importance came up when it was asked whether the disorder in the seceded states constituted an insurrection or a rebellion. The government made an attempt to treat it as an insurrection, but the acts of Britain and France, recognizing the belligerency of the Confederacy, and acts of the national government itself, such as that establishing a blockade, made this theory untenable. Another question was how far the constitutional guarantees of private rights were compatible with a necessary use of the military powers of the President. Where insurrection or rebellion actually existed, the conclusion must be that military law is superior even to the Constitution. A good example of this is the famous Emancipation Proclamation, by which citizens of the seceded states were deprived of their property "without due process of law." We must further conclude that in parts of the country where there is disaffection without disorder, the President must be allowed to use his discretion. The attempt of the Supreme Court to restrain President Lincoln from suspending the writ of *habeas corpus* in Maryland was a complete failure, and showed that the court must not attempt to interpret the Constitution as it would in times of peace, unless it wishes to destroy its own influence. Later, however, the decision in the *Milligan Case* (1866) supported the claim which is likely to be recognized in the future, except in extreme cases, namely, that the military courts must not try to supplant the civil courts where the latter are being held. Yet it will probably be the rule that the judiciary will not attempt to interpret the Constitution for the President, who in times of war must be a sort of dictator, even though he

may not receive the full support of Congress, as Lincoln did.

The problem of reconstruction.

205. Reconstruction. — The reconstruction period was much more productive of changes in the written and the unwritten constitutions than the Civil War had been. The time of our statesmen was largely devoted to the complicated problems to which the peculiar condition of the seceded states gave rise, or which grew out of the duty of the government to the negroes just freed by the thirteenth amendment. The magnitude of these problems was unquestioned, but, unlike many difficulties we have encountered, the solution could not be left for some indefinite future time. It was necessary to take action at once, to map out a policy comprehensive enough to cover all questions, closely in touch with the spirit of the period, yet not inconsistent with our previous history.

Five theories as to the status.

Dunning, *Reconstruction*, 99–112.

206. Status of Seceded States. — The greatest legal difficulties were presented by the questions: what was the status of the seceded states? were they in the Union or out of the Union? To admit that they were out of the Union would have been to acknowledge the right of secession, the success of secession, or both. If it was claimed that they were in the Union, there was no reconstruction problem, only need of restoration to their normal condition. While a direct answer to this question was seldom given, several theories were developed, soon after 1865, presenting different points of view. The *Southern* and *the presidential theories* agreed that the states were still parts of the Union, but out of their constitutional relations to the central government. They stated that restoration should take place through action of the people of each state, under limitations prescribed according to the first by those people; according to the second by the President. Charles Sumner held the theory that when a state tries to secede, it commits *suicide* as a state, that it thereby loses all organization as a local political society, and becomes merely a part of the territory of the Union, under its control in regard to local, as well

as national affairs, *i.e.* the states reverted to the condition of territories. Thaddeus Stevens went further, and in the *conquered province theory* advocated the view that the South was not even in the condition of territories; that it was a conquered district. He therefore proposed wholesale confiscation and appropriation of land to negroes. As none of these theories was acceptable to moderate men, the theory of *forfeited rights* came to be the basis of final reconstruction. It held that the people of the states had forfeited their rights by attempted secession, and that those rights could be restored to them only on the fulfilment of certain conditions. The judge of what the conditions should be, and when they had been fulfilled, was Congress, because Congress was instructed by the Constitution to guarantee to each state a republican form of government.

207. **Plans of Restoration.** — President Lincoln and his successor, President Johnson, were anxious to have the seceded states restored to their constitutional relations as soon as possible. To this end they used their power as commanders-in-chief to grant amnesties and pardons, and, in addition, declared that when a state government had been formed by loyal voters equal to one-tenth of the whole number of voters in 1860, they would recognize such a government and declare the state fully restored. Lincoln's death left the application of this plan to Johnson, who attempted to carry it out. But he reckoned without his host, for Congress objected to the doctrine that restoration was to be through the President, and proceeded to take full charge of all Southern affairs.

Lincoln's and Johnson's plans.

Johnston, in Lalor, III, 541 *et seq.*

Dunning, *Reconstruction*, 75–87.

208. **Negro Legislation.** — Instead of dealing at the first directly with problems of reconstruction proper, Congress contented itself with the care of the freedmen. A bureau for the care and supervision of the freedmen, which was in the beginning considered temporary, was, in 1866, renewed with greatly enlarged powers. The President objected on the ground that the bureau was suited only to war conditions, and that as Congress did not represent the Southern

Freedmen's Bureau Bills.

Wilson, *Division and Reunion*, § 127.

Johnston, in Lalor, III, 546–549.

Dunning, *ibid.*, 87–91.

Civil Rights Bill.

Dunning, *ibid.*, 91–99.

states, it was an unconstitutional body. A little later a similar bill was passed over the President's veto. This was followed by the much more radical Civil Rights Bill. The undoubted purpose of the act was to protect the negroes from the discriminating legislation of the Southern legislatures, which sought to reëstablish a form of serfdom. To do this, it made the negroes citizens, and declared that they had the rights of citizens to hold property, sue and be sued, to give testimony, and of equal protection of the laws. Elaborate provision was made for the proper enforcement of the measure by national authority. The bill was promptly vetoed by Johnson, but as promptly passed over the veto. In order to place these rights beyond the power of future congresses, the fourteenth amendment was soon after proposed, not only making the negro a citizen, but bringing pressure to bear upon the states to grant him the franchise.

Five military districts.

Wilson, *Division and Reunion*, §§ 128–131.

Johnston, in Lalor, III, 551–554.

Dunning, *ibid.*, 136–148; 176 *et seq.*

209. **Military Reconstruction.** — Congress then devoted itself to the problem of reconstruction. It had by this time thoroughly broken with the President, and did everything in its power to injure him. In the military reconstruction bills (1867), the whole subject was left to Congress or to the general of the army. The South was to be divided into five military districts, each under the control of a military commander with almost absolute power. Under the supervision of this commander, a registration was to be made of all male persons of voting age, except those disqualified by participation in rebellion. A state constitutional convention was to be chosen by these registered voters, the fourteenth amendment was to be ratified, and no registered voters were to be disfranchised. If the constitution met with the approval of these voters in the states and of Congress, the state was to be considered a full member of the Union. Under these acts military reconstruction was completed in all of the states except Tennessee, which had been "readmitted" in 1866, and in Texas, Mississippi, Virginia, and Georgia, which were obliged to pass the fifteenth amendment, also, as a condition of "readmission."

210. Impeachment of President Johnson. — Ever since the passage of the second Freedmen's Bureau Bill the executive and legislative branches had been getting more and more out of sympathy with each other. Congress proceeded to pass all important measures over the veto with unfailing regularity. But it did more. It (1867) arranged its sessions so that they should be practically continuous, took from the President the powers of issuing general proclamations of pardon, of suspending the writ of *habeas corpus*, and of removing officials. It virtually placed control of the army in the hands of General Grant. The President could retaliate only by denouncing Congress, which he did in most intemperate language. He attempted to ignore the Tenure of Office Act, which had taken from him the power to remove national executive officials; but by that succeeded in arousing Congress to such a pitch that articles of impeachment were brought against him by the House of Representatives. The charges, of which there were eleven, were principally of a political nature, and party feeling ran so high that the danger of conviction was very great. After a long trial the Senate voted (35 to 19) that the President was guilty of the principal charge brought against him. As a two-thirds majority had not been obtained, most of the other charges were dropped.

Conflict between Johnson and Congress.

Dunning, *ibid.*, 253–271.

Impeachment charges and trial.

Dunning, *ibid.*, 272–303.

Johnston, in Lalor, II, 482–484.

211. Effect of the Verdict on Impeachment. — The acquittal of Johnson had been due to the belief, on the part of certain leaders in the Senate, that conviction would greatly damage our constitutional system by leading to the permanent subordination of the executive to the legislative branch. The truth of that belief is only too apparent when we come to consider the relation of the two departments during the next twenty years. While the President's chair was occupied most of the time by men respected and trusted by Congress, the executive was almost without authority and influence. What the effect would have been had Johnson been removed from office by political passion, it is impossible to say. There can, however, be no uncertainty that

Prevented executive subordination to Congress.

the executive demoralization that must have followed the elevation of a reconstruction leader to the chief magistracy, coupled with the moral effect of conviction on both departments, would have produced a radical change in our system of government, perhaps for better, probably for worse.

The XIII Amendment (1865).

The XIV Amendment (1868).

The XV Amendment (1870).

212. **The Amendments; Provisions.** — The changes in the written Constitution were embodied in three amendments, — the thirteenth, fourteenth, and fifteenth. The first had been proposed by Congress February 1, 1865, and abolished slavery in every part of the Union. It was declared ratified December 18 of the same year. The fourteenth amendment did for the Civil Rights Bill what the thirteenth had done for the Emancipation Proclamation, but it covered other subjects. All persons born or naturalized in the United States, and subject to its jurisdiction, were declared to be citizens of both the United States and of the state in which they resided. No citizen of the United States was to have his privileges or immunities abridged by the states, "nor should any person be deprived of life, liberty, or property without due process of law." If a state attempted to cut off any class of adult male citizens from the franchise, it was to lose a proportional number of representatives in the lower house. The validity of the United States debt was not to be questioned, but all Southern state debts incurred during the war were declared illegal. The amendment was proposed in 1866, and was proclaimed a part of the Constitution in July, 1868. The next year Congress proposed, in the fifteenth amendment, that "the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state, on account of race, color, or previous condition of servitude." As with the other amendments, Congress was to have power to enforce it by appropriate legislation. On March 30, 1870, ratification was completed and changes in the written Constitution ceased.

213. **The Supreme Court on Reconstruction Questions.** — By its interpretation of the reconstruction acts and of the

amendments, the Supreme Court played a very important part in the history of this time. In *Texas* v. *White* (1868) the court declared that there was an "indestructible Union of indestructible states"; that no state had lost its statehood, but that, nevertheless, when a state is out of its ordinary relations to the nation, Congress had the power to restore it to its proper position.

Texas v. *White* (1868).

Dunning, *Reconstruction*, 133–135.

In the *Slaughter House Cases* (1873) and in the *Civil Rights Cases* (1883) the court gave its construction of the first clause of the fourteenth amendment. In the former, attention was called to the fact that the privileges of a citizen of the United States are different from the privileges of the citizen of a state, and that the purpose of the amendment was to keep the states from infringing upon the privileges of United States citizens, not at all to regulate the rights of citizens of a state as affected by state laws. By this decision the court failed to nationalize civil rights as it might easily have done, but carefully protected the rights of the states from the aggressions of Congress.

The *Slaughter House Cases* (1873). Cf. §§ 248–249.

In the *Civil Rights Cases* the law of Congress (1875) prohibiting any discrimination by railroads, innkeepers, and others, on account of color, was held to be in excess of the powers of Congress, because the civil rights dealt with by the act were rights of citizens of the states.

Civil Rights Cases (1883).

While the court limited itself to a strict construction of the fourteenth amendment, it made use of the doctrine of implied powers in regard to paper money. The first decision (1870) was that the issuing of paper money (1862, 1863, § 601) was a war measure, not justified in times of peace. In the *Legal Tender Cases* (1872, and again 1884) the court reversed its decision, and recognized the right of Congress to issue "greenbacks" at its own discretion. The general influence of these opinions on the relations of the states to the nation, and on the powers of Congress, was almost inestimable.

Cases affecting United States notes.

Knox, *U. S. Notes*, 156–166.

214. The Aftermath of Reconstruction. — After the seceded states had been "readmitted," there was left to them

"Carpet-bag" government.

Johnston, in Lalor, III, 554–556.

the great difficulties of reorganizing their state governments. In the formation of the new constitutions, the negroes had been allowed to vote according to the provisions of the Reconstruction Acts. For a majority of the states, the control of political affairs remained for several years in the hands of freedmen, without training or capacity for governing, and frequently led by white adventurers, more capable perhaps, but less scrupulous than themselves. The result was misrule, scarcely equalled in extravagance or corruption by our large cities during their worst periods of bad government. In a short time several of the states found themselves burdened with debts of $40,000,000 each.

Disorder and the force acts.

Wilson, *Division and Reunion*, §§ 134, 135.

Johnston, in Lalor, II, 680–682.

To such government the better classes refused to submit. By methods similar to those employed by the famous "Ku Klux," by intimidation and fraud, the whites often succeeded in gaining possession of the government or in setting up a rival organization. In these serious civil disputes, Congress sought to protect its new citizens by the use of national authority, applied in "force" acts, but it was not successful in maintaining order.

The electoral commission (1877).

Johnston, in Lalor, II, 50–53.

This state of affairs came near causing a crisis in the presidential election of 1876. Two sets of returns were sent in by Louisiana, South Carolina, and Florida. As Congress was unwilling to give the president of the Senate discretion as to which he should count (twelfth amendment), it finally agreed to create an "electoral commission," composed of five senators, five representatives, and five justices of the Supreme Court. The decision of this commission was, fortunately, accepted by all parties, and a serious danger averted.

QUESTIONS AND REFERENCES

Slavery before 1845 (§§ 191–194)

a. Compare the accounts on slavery given by Von Holst, *Constitutional History*, I, 302–339; Burgess, *Middle Period*, chap. III; Rhodes, *United States*, I, chap. I; Draper, *Civil War*, Vol. I; Greeley, *American Conflict*, I, 49 *et seq.*

1. Under what conditions would slavery have been favorable to nationality? Were there any instances in our history when slavery was not sectional?

2. Show clearly whether the "clock of ages was turned back full half a century by the Constitution of 1787," and why.

3. Write an outline sketch of the history of emancipation in Europe and in European colonies during the nineteenth century.

4. Had there been any doubt in 1787 and in 1820 as to the right of Congress to prohibit slavery in the territories?

5. Make a table showing the action of Congress regarding slavery in the public domain from 1787 to 1862. Compare areas closed to or left open to slavery.

6. Was there more, or less, nationality in the United States in 1845 than in 1825? why?

Slavery in the Territories (§§ 195–197)

a. Study Webster's "Seventh of March Speech" (1850) in *American Orations*, III. Notice what statements called forth especial comment. For that comment consult notes on the speech, Lodge's *Webster*, Burgess's *Middle Period*, Rhodes's *United States*, etc.

b. Read the "Dred Scott" decision in Thayer's *Cases in Constitutional Law* and the extracts from opinions in Macdonald's *Documents*. The best short account is in Burgess. Consult Rhodes for views of North and South at the time, Douglas's confession in his debate with Lincoln (Vol. II), and conflicting views in the Charleston convention of 1860.

1. Did the measures included in the Compromise of 1850 give a victory to the North or to the South?

2. Just what is meant by "popular sovereignty"? Did the Compromise of 1850 repeal that of 1820? So long as the state of Missouri was no longer under the control of Congress, what moral right had that body to repeal the Missouri Compromise? Has Congress a right to pass irrepealable laws? Give your reasons in full. Was the repeal of the Missouri Compromise a political mistake?

3. Which was more in conformity with our customs and our institutions, popular sovereignty or territorial government by Congress? If the slavery question was to be left to the territories, why not follow Chase's suggestion, and leave them complete self-government?

4. Compare the opinion of Taney with the dissenting opinion of Curtis. Which gives the stronger argument on the question of negro citizenship? Do you approve Taney's position on the relation of the nation to "Missouri territory"?

5. What was the effect of the decision, and what would have been the effect had Curtis's position been upheld upon (*a*) slavery in the territories, (*b*) slavery in the free states, (*c*) slavery in the slave states, and (*d*) sentiment in the North and the South?

6. Was the decision dangerous to the North? Was it approved by Douglas and the Northern Democrats? Was compromise between the North and South possible after the decision?

Secession and Civil War (§§ 198–204)

a. For the difference between the slave and free states consult Helper's *Impending Crisis*, chaps. I, VIII; Von Holst's *Constitutional History*, I, 240–256; Wright's *Industrial Evolution of the United States*, chap. XII; Hart's "Why the South failed in the Civil War," in *Practical Essays on Government.*

1. What is secession? State the difference between nullification and secession. Is either based upon the national theory of the Constitution? Why was the Constitution silent on the subject? What is the difference between state rights and state sovereignty?

2. Could anything but slavery have caused secession? Show clearly how it led to secession. Can you imagine that the North might have seceded? If so, under what conditions, and on what constitutional grounds?

3. How far had the North controlled the central government from 1830 to 1860? how far had the South? Was the victory of the Republican party a menace to slavery in the states? (Study carefully Republican platform, views of leaders, etc.)

4. Compare the constitution of the Confederate states with that of the United States. In what do they differ principally? Were the states more nearly sovereign in the former? Compare the Confederacy with the Union in population, size of army and navy, finances, dependence on outside countries for war necessaries.

5. What "war powers" were exercised by the President? Which ones were unconstitutional? which ones extra-constitutional? Is there a "law higher than the Constitution," judged by the events from 1850 to 1865? judged by the "presidential dictatorship"?

Reconstruction (§§ 205–214)

a. On the impeachment of Johnson consult Sherman's *Recollections*, I, 413–432, and Blaine's *Twenty Years in Congress*, II, 341–384, on the one hand, and Cox's *Three Decades*, 578–594, Ross, E. G., in *Scribner's*, XI (1892), 519–524, on the other. Consider the view of

Chadsey in his *Struggle between President Johnson and Congress*, chap. VI.

1. How were the negroes treated in the South in 1866? What new principles did the Civil Rights Bill incorporate into our system? Why was it immediately followed by the fourteenth amendment?

2. How did the military reconstruction bills invade the sphere of duties and powers heretofore exercised by the state governments? Did Congress have the right to reimpose conditions on the states before they were recognized as members of the Union?

3. Did the changes of the Civil War and the reconstruction period amount to a revolution? for what reason?

4. Make a complete comparison of the Emancipation Proclamation and the thirteenth amendment; of the Civil Rights Bill and fourteenth amendment.

5. Make a careful study of the first paragraph of the fourteenth amendment. Had there been a United States citizenship before 1868? If so, in what respects was it different from that after 1868? Did Congress intend to nationalize civil rights by this clause? What advantages have we derived from the interpretation placed upon it by the Supreme Court in the *Slaughter House Cases?* what disadvantages?

6. Was the electoral commission constitutional? What was its chief duty? Would it have been a success in Mexico? in France? Can the difficulties of 1877 recur? Is the principle of the electoral count bill (1887) wise? (§ 333.)

CHAPTER IX

THE NEW NATION

General References

Johnston, *American Politics*, XXIV–XXVII.

Channing, *Student's History*, 573–603.

Montgomery, *Student's History of the United States*, 485–542.

Wilson, *Division and Reunion* (to 1889), 273–299.

Wright, *Industrial Evolution of the United States*, 159–352. The best brief account of economic changes since 1860.

Cleveland, *Growth of Democracy*.

Carnegie, *Triumphant Democracy*.

Boutwell, *The Constitution at the End of the First Century*. Under an analysis of the Constitution gives the construction placed upon the more important clauses by the Supreme Court.

Tiedeman, *Unwritten Constitution of the United States*. A very suggestive little book.

Personal accounts of Cox, Sherman, McCulloch, and Blaine, as in last chapter.

Appleton's *Annual Cyclopedia* (1865–). A storehouse of facts and documents.

Cyclopedic Review of Current History (1890–). The best continuous contemporary narrative.

Durand, "Political and Municipal Legislation" (1895–1899), in *A. A. A.*

Whitten, "Political and Municipal Legislation" (1899–), in *A. A. A.*

Dunning *et al.*, "Review of Current Events," in each volume of *P. S. Q.*

Stimson, "Economic and Social Legislation," in *Yale Review*.

Shaw, "Current Topics," monthly, in *R. of R.*

Summary of Legislation by States, published by the New York State Library yearly since 1890.

Current periodicals. Consult periodical indexes under titles United States, Corporations, Railways, Legislation, Suffrage, Strikes, etc.

215. Economic Conditions before the Civil War. — All of our wars have been productive of great changes, not alone in our political life, but in the life of the people and conditions affecting their occupations. The results of the Civil War were necessarily more important than those of smaller conflicts, and the reorganization following its close was not confined to political and social lines, but entered into commerce, industry, and other every-day affairs. Everywhere, and all the time, this reorganization tended to produce a stronger national feeling and a new national life.

New national conditions produced by the war.

In ante-bellum days the country was still largely devoted to agriculture. Manufacturing was on the increase, but no single plant involved very great capital or commanded an extensive market. Few of the railroads crossed from one state to another, although there was even then a marked tendency toward consolidating several small roads into one large one. There was almost no national currency, most of the coins in use bearing a German or a Spanish-American stamp; and the bills in use were issued by state banks, so that they were subject to great discount outside of that state. All of these things hampered the production and transportation of goods on a large scale.

Ante-bellum conditions unfavorable to industry or commerce on a large scale.

216. Economic Conditions after the War. — How different was the situation after the war! The state banks had been compelled to withdraw their bills from circulation because of the prohibitory tax of ten per cent placed upon them by the central government. The country was flooded with greenbacks, of which four hundred and fifty million dollars' worth had been printed and paid out by the United States, and with national bank bills. Gold and silver were no longer used in ordinary transactions, as a paper dollar was legally as valuable as one of silver, though actually worth much less. Consequently, prices were high, speculation was becoming more common, and large investments of capital were constantly being made. The construction of a transcontinental railway is evidence of the new spirit

All conditions aided industrial development

of the business world. Manufacturing had been stimulated by the need of providing our troops with necessaries, and in procuring materials for the prosecution of military campaigns. When peace came, conditions were most favorable to manufacturing; for, during the war, it had been necessary to raise revenue by taxes on articles produced in this country, and in order to protect home industry from too great foreign competition, the duties on goods imported had been raised to correspond. So great was the opposition to the internal taxes that they were now removed as quickly as possible, but no change was made in the duties. This assured sufficient protection to warrant the investment of still more money in industry. It was customary to form companies, incorporated under state law; but the sale of stock in these corporations was not confined to a single state, nor were their products sold within as limited an area as formerly.

Statistics showing growth from 1860 to 1910.

Wright, *Industrial Evolution*, 159–188.

Bogart, *Econ. Hist. of U.S.*, 317–337, 373–418.

217. **Development of Industry and Commerce.** — Some idea of the tremendous internal development of this country since 1860 may be obtained by comparing statistics of that year with those of later dates. In 1860 the amount of capital invested in manufacturing was almost exactly $1,000,000,000, and the value of the product was less than $2,000,000,000. In 1905 the capital used in manufacturing, exclusive of the neighborhood industries and hand trades, amounted to $12,686,265,673, and the value of the products was $14,802,147,087. Our commerce within the United States has increased in much the same ratio. In 1860 our 30,000 miles of track received scarcely $275,000,000 for transporting freights. In 1880, with 85,000 miles operated, the gross receipts from this important branch were $467,748,928. In 1909 we had 230,000 miles of line, representing an investment of $14,000,000,000 and earning nearly $2,500,000,000 a year, nearly three-fourths of which came from freight.

Formation of great corporations.

We cannot expect that this increase of business was accompanied by no new methods. For our purpose, it

will be sufficient to call attention to the great consolidation of capital which has made possible production or transportation on a large scale. This is no new thing. It has been going on all the time, but it has been more rapid since the Civil War, and especially rapid during the last two or three years. Before 1860 the largest railroad in the country boasted less than 1000 miles of track. Now eight systems control 70 per cent of the railway mileage of the United States. Before the Civil War large corporations were unknown. Now we have one billion-dollar trust, and about 300 others control three-fifths of all the capital engaged in industry.

Need of control.

218. The Control of Railroads. — These economic changes have been the most characteristic feature of the new nation. The control of the corporations which have grown up at the same time has proved to be a serious problem to both the state and the national governments. Many of them are of such a character that they either have special privileges conferred upon them by law, or have a monopoly of the trade in their line, in spite of legislation.

State railway commissions.

Hadley, *Railroad Transportation*, 134–145.

Since the railroads were the first corporations of importance, state railway commissions were organized as early as 1870. They were given power to fix rates and make regulations; but before long they encountered difficulties because the railroads ran into other states. Attempting to control the portion of the railroad outside of the state, their acts were reviewed by the United States Supreme Court, which declared them unconstitutional on the ground that only the central government could regulate interstate commerce. Soon after, the recognized need of such interstate control led Congress to pass the Interstate Commerce Act (1887). The purpose of this measure was threefold: (1) to see that rates are reasonable; (2) to prevent a railroad from charging one person more than another for the same service, or from asking more for a shorter distance than for a longer one; and (3) to prevent combinations of railroads for the purpose of "pooling" profits. In order

Interstate commerce commission (1887).

Das Passos, *Interstate Commerce Act.*

that this law might not be a dead letter, an interstate commerce commission of five members was appointed, with power to hear and decide disputes, and call upon the national courts to enforce its decisions.

Government interference in strikes (1877, 1894).

Wright, *Industrial Evolution*, 301–306, 313–317.

In cases of strikes, the state and national governments are often asked to interfere. The great railway strike of 1877 was productive of great disorder, which ceased when the United States troops were sent by the President, at the request of state governors. During the railway strike of 1894, the state militia was used in many places, and the regulars were sent to Illinois to protect national property and the United States mails, in spite of the protest of the state executive.

State law regarding incorporation and control.

Whitten, *Trend of Legislation*, 415–419.

219. **Regulations for Industrial Corporations.** — It is surprising how many provisions dealing with industrial regulation have been inserted in recent constitutions, and what a large part of state legislation has been devoted to this subject. Incorporation always takes place under general laws, and most constitutions specify that charters may be amended or revoked at the wish of the legislature. Attempts are made to protect the public by fixing the individual responsibility of the directors, by making companies open their accounts to the inspection of those interested, and in other ways. A great many commonwealths have tried to prevent the further combination of capital, and have made drastic laws to control trusts, but usually without success. More often than not this legislation, hasty, ill-considered, and passed in ignorance of natural economic laws, has done harm rather than good. Recently there has been a movement to have a large number of states adopt the same laws regarding corporations. This shows that industry is no longer a state affair, and that national action is becoming more necessary.

National anti-trust law of 1890.

According to the Constitution, Congress has almost no power over industry, because few corporations are erected under national law. In 1890, however, an anti-trust law was passed, which attempted to prevent the combination

of capital for the control of interstate or foreign trade and commerce; but, of course, it does not cover the vast number of corporations doing business solely within state limits.

Stimson, *Handbook of Labor Law*, 334–347.

Combinations of labor, as well as combinations of capital, are subject to state supervision. The adjustment of difficulties between the employer and the employee is occupying a constantly larger place in the work of legislation and administration. Those features of strikes which interfere with the rights of others, or cause the destruction of property, are prevented by the courts and through the exercise of the police power. The prevention of strikes has been attempted by the use of boards of arbitration.

Control of labor disputes.

Stimson, *Labor in Relation to Law*, 78–117.

220. **The Tariff.** — Our business has been greatly, though indirectly, affected by the action of the Congress on the money standard and on imported articles. Both of these subjects have been made prominent in political circles, so that many of our elections since the war have turned upon them. A brief consideration of the main points of each is all that will be given here, as they will be treated more fully later.

Economic questions in national politics.

The war tariff of 1864 continued to aid the development of industry, and was scarcely changed at all till 1883, when many of the protective duties were increased. The opposition to this high protection was the basis of the presidential elections of 1888 and 1892, the former being won by the protectionists who, in 1890, passed a bill placing many articles on the free list, but increasing the duties on those left. In 1893 a measure ostensibly for revenue only, but in the end involving no real principle, replaced the McKinley Bill; and, in 1897, this, in turn, gave way to the Dingley Bill, which was more consistent, but avowedly protectionist. The early years of the twentieth century were marked by continued agitation for tariff reform. In 1909 the Payne-Aldrich tariff was passed, introducing no new principle except that of the double tariff, 25% of the cost of all goods being added to the regular duty on imports from countries that discriminated against us.

The tariffs (1864–1909).

Cf. §§ 539, 609, 610.

Larned (ed.), *History for Ready Ref.*, IV, 30, 83–89; VI, 581–582, 639; VII, 640–647.

The silver question (1873–1896).

Cf. §§ 540, 599.

221. The Currency. — At the close of the war there was no coin in circulation, as we have seen, and it was not until 1879 that the United States government dared to resume specie payments and redeem its paper in gold. In the meantime (1873) a change had been made in the laws, by which silver was no longer the subject of free coinage, as it had scarcely been coined at all since 1834. When hard money began to come into circulation again, there was considerable agitation in favor of free coinage of silver dollars, and in opposition to the retirement of the greenbacks. This resulted in the retention of the latter, intended at the first to be used only during the war, and in the passage of what was known as the Bland-Allison Bill, in 1878, making it obligatory for the United States to buy and coin at least two million dollars' worth of silver a month. In 1890, by the Sherman Silver Act, Congress authorized the Treasurer to buy at least four and a half million ounces of silver a month, but the law was repealed during the panic of 1893. In the election of 1896 the chief issue was the question of free silver coinage alone or in connection with other nations. The commercial sections of the country were greatly opposed to any change in the standard, and a consideration of free silver was therefore postponed.

Restrictions upon the legislatures.

Cf. §§ 422–426.

Bryce, 339–341.

222. The People and the State Constitutions (1860–1900). — Besides the changes made necessary by new economic conditions, the state constitutions have been greatly developed along lines similar to those in which alterations were made before 1860. The most notable characteristic is the greater part played by the people in government. This expresses itself in many ways. The distrust of the legislatures has become even more prominent, so that they are prevented in many cases from making laws at all; and every time a state adopts a new constitution, it adds a few things to the list of subjects for which the legislature cannot make special laws. In many states this restriction covers at least fifty titles. All of these things mean, of course, that the people insist upon having more of the laws sub-

mitted to them for approval. The constitutions are becoming more and more like codes which need constant revision.

Many of the states have gone farther. Not only must constitutional amendments be submitted to the voters, but if a certain per cent wish to have a law voted upon by the people before it can be enforced, the legislature in those states must submit the law at the next general election. This method, called the "referendum," was first used in this way in America about 1845; it has been well developed in the cantons of Switzerland. At present it is used most in the localities of the middle West, and especially in connection with matters of finance or local organization. South Dakota has recently (1898) applied the method to all state laws on petition of five per cent of the voters. She also permits the same proportion to suggest laws which must be submitted to popular vote. This is called the "initiative."

Direct legislation.

§§ 528, 529.

223. **The Suffrage.** — Changes in the franchise have been going on all the time. In one way they have helped to restrict the right to vote, in another to enlarge it. The most important change since 1865 was that caused by the fifteenth amendment to the United States Constitution, which made it obligatory upon the states to extend the suffrage to negroes. But the evils of indiscriminate extension have been manifest all over the land; and many of the states which formerly permitted aliens to vote as soon as they declared their intention to become citizens, or even before that, have withdrawn the privilege, though twelve still permit it. Educational qualifications have become more common, and, of late, the requirement is sometimes made that the person shall not only read or write, but do it in English.

General changes.

Haynes, *Qualifications for Suffrage*, in *P. S. Q.*, XIII (1898), 495–512.

In the South the whites are struggling with the problem of how to disfranchise the negroes without violating the national Constitution. In 1890 Mississippi, which has a population over one-half black, established an educational test for voters. In 1895 South Carolina, in which the

New qualifications in the South.

Haynes, *ibid.*

Oberholtzer, *Referendum*, 120–125.

negroes outnumber the whites nearly two to one, adopted an alternative educational or property qualification. Louisiana, North Carolina, Virginia, Alabama, and Georgia later adopted complicated suffrage laws with so-called "grandfather clauses," which made citizenship before 1867 or military service a requirement for a voter or an ancestor, unless the voter owns property or is educated.

Woman suffrage.

Bliss (ed.), *New Encyc., of Social Reform*, 1295–1299.

During these years there has been a great deal of agitation over woman suffrage. Many constitutional amendments have been submitted to the voters, but in most cases they have been defeated. More than half of the states allow women to vote in school elections and several permit women taxpayers to vote in certain cases, but only five, Wyoming, Colorado, Idaho, Utah, and Washington, give the right of general suffrage for state and national elections.

The Australian ballot and other election regulations.

Cf. §§ 523–525.

Allen, P. L., in *P. S. Q.*, 21 (1906), 38–58.

Beard, C. A., in *P. S. Q.*, 24 (1909), 589–614.

224. Reform of Elections. — During the last twenty years a very earnest attempt has been made to avoid some of the dangers to which democracy has been especially subject. The chief of these reform movements dealt either with the elections or the civil service. The open ballot of the forties was replaced by one much more guarded, and, finally, by a system known as the Australian ballot, by which the chances of bribery and corruption have been reduced to a minimum. The Australian ballot is used almost universally, but many demand as a further reform a short ballot, with only a few officials elected at a time. Candidates are often compelled to render account of their election expenses, but these "corrupt practices" acts have not been effective.

Primaries and direct nominations.

Shaw, W. B., in *Outlook*, 90 (1908), 383–389.

Primaries have been brought under the supervision of the law, most of the states requiring all parties to select convention delegates or nominate their candidates at primary elections. Because of dissatisfaction with the convention method of nomination, these primary elections are usually held, not for the selection of delegates to nominating conventions, but to nominate directly the candidates for the different offices for each party; that is, direct nominations in direct primaries are becoming the rule in most of the states.

225. Civil Service Reform. — From what has already been said, and from what we know about the "spoil system," we can readily appreciate how much harm it has done good government. "Civil service reform" has been the watchword of a large class of our best citizens, who have given attention to politics. The national administration was the first attacked. For three years, under Grant, examinations were required of a few officials, but real progress dates from the passage of the Pendleton Act, in 1883. Since that time, by Congressional legislation or executive ordinance, sixty per cent of more than three hundred and fifty thousand United States government positions have been placed on the classified lists, and are now filled according to merit. In the state, county, and municipal governments the same principles have been applied to some extent; but the vast majority of the two or three hundred thousand appointees, besides those in schools, have no higher qualifications than friendship and influence.

Progress made in the nation, the state, and the localities.

Cf. §§ 345, 499, 552.

226. Cuba and the United States. — During the whole of the nineteenth century the affairs of Cuba and the United States have been more or less interwoven. As early as 1825 diplomatic suggestions of our government had an indirect influence upon Spain's retention of her West India possessions. Twenty-three years later the Secretary of State offered to buy Cuba for $100,000,000. In the ten years' revolution, which began in 1868, the United States was called upon several times to see that American interests were protected. After 1878 investment by our citizens had increased rapidly, and when insurrection broke out again, in 1895, it meant great loss and privation to many living in the United States. This condition of affairs, coupled with the harsh "reconcentrado" policy of Weyler, led Cleveland, in two messages, to assume a bold attitude, and, after urging Spain to submit the dispute to arbitration, to state that if the war were continued, it might become necessary for the United States to interfere. Feeling against Spain had grown very strong before the destruction

Relations during nineteenth century.

Hart, A. B., in *Harper's*, Vol. 97, 127-134.

of the *Maine* (February, 1898) and the report of the committee of investigation that the vessel had been blown up by a submarine mine. War now seemed inevitable, and, on April 25, 1898, Congress declared that a state of war existed between the United States and Spain. Six days before, a joint resolution had been passed that Cuba should be free and independent, and that the United States should not interfere with government by her own people.

The treaty with Spain (1898).

227. **Acquisitions of Territory.** — During the war Congress voted to annex Hawaii, which had thrown off her monarchical government in 1893, and had sought annexation by means of treaty. When hostilities with Spain ceased, we were in possession of Porto Rico, a large part of Cuba, and the territory around Manila. In the negotiations we sought to gain Cuba for the Cubans, without the Spanish-Cuban debt, and Porto Rico, the Philippines, and some smaller islands for ourselves. The treaty, in its final form, conceded everything the Americans asked, the Spanish property in the Philippines being sold for $ 20,000,000. The ratification of the treaty met with opposition in the Senate, from those who feared the dangers which colonial possessions so far away would bring; but the necessary two-thirds was finally forthcoming. During this debate in the Senate an attempt was made to pledge the nation to grant the Philippinos complete rights of self-government, but it was unsuccessful. Soon after the administration had to deal with the double problem of crushing the Tagal rebellion, headed by Aguinaldo, and of finding such a government for the different islands in the Philippines and for the West Indies as should secure the civil rights of the inhabitants, guarantee protection of property, and yet leave the people such a share in government as they seem fitted to use.

The Philippine rebellion.

Difficulties and importance of colonial questions.

The proper control of these colonies, and the altered international relations which the possession of this outside territory will bring us, bid fair to outrank, in popular

interest and in real importance, all other questions now confronting the national government.

228. The Constitution at the End of a Century. — What a difference there is between the United States of 1789 and that of to-day, and yet what a similarity! The similarity is in governmental forms and political theories; the difference in the spirit which animates society and politics. But the spirit is no new creation, it is an evolution that finds its beginning not even in the revolutionary epoch, but in the earliest colonial settlements.

A century's changes in the spirit of government.

Wilson, *Cong. Gov't*, 13–24.

In 1789 we had a federal system nominally the same as it is now; but then we had States and a nation, now there is a Nation and states. Then all spoke of the states as sovereign, and of the central government as sovereign only in regard to the powers conferred upon it. A hundred years ago the right of secession was practically claimed by every section; to-day no state would dare to attempt to call withdrawal from the Union legal secession. In the early years of our history much was heard about nullification, but our present interest in the word is purely historical. Whatever we may think about the permanence of the states, one thing is assured: the Union will stand, growing stronger with the onward march of the centuries.

Changes in the federal system.

229. The Central Government. — The contrast between the United States government in 1789 and in 1900 is most striking. In 1789 none of the three departments had tested its strength, and none knew whether it would prove able to perform the tasks assigned it. Few people expected to see the old Confederation, with its lack of power, its failure to inspire respect, its impaired credit, and its overwhelming debt, replaced by a new government that should show itself competent just where the old Congress was inefficient. To the people of that day the central government was far removed, a vague impersonal being much more of a necessary evil than a permanent good; and, if too powerful, an engine for the destruction of liberty. That it did not inspire awe, perhaps not respect, is evident from

The national government in 1789.

Bryce, 278–284.

Cf. Wilson, *Cong. Gov't*, 28–57.

the events connected with the first Congress and the first inauguration. We cannot imagine to-day a meeting of Congress called for the 4th of March which does not take place until the 6th of April, because no quorum is present; nor can we think of an inauguration postponed eight weeks beyond the day set. For such a state of affairs poor roads and adverse winds cannot be held responsible by the most charitable historian.

Its position to-day.

The fears which the people had of the Congress and the President, as well as the dangers of impotent government, were not overcome in a day. But the ship of state has gallantly weathered every storm. It has shown its own strength and won the confidence of its citizens. We do not dread it more than the other governments under which we live, and our attachment to it to-day is more real and pronounced.

The separation of departments maintained.

In this development a great many provisions of the paper constitution have been ignored or supplemented by law and custom, yet we still find that the separation into three departments, largely independent, is no fiction. The legislative department is necessarily the most powerful, as it has the most important work to do; but it has never subordinated the others entirely to itself. Each has maintained a position essentially that which the "fathers" expected.

Some characteristics of the unwritten Constitution.

Bryce, 271–274.

230. **The Unwritten Constitution.** — We have already indicated how the federalism recognized by the Constitution has been modified, but several changes of great significance, though more specific, deserve mention. The most important characteristic is the general tendency toward a liberal construction of the written Constitution, covering such subjects as the acquisition of territory, the making of internal improvements, and the issuing of paper money, none of which are authorized in that document. Since 1800 the President has not been chosen by electors exercising independent judgment, but by persons representing political parties, and now chosen by the qualified voters of each state. They do no more than register the wishes of the

majority of those voters. A President may be reëlected once, but not twice. His power in time of war is all that the most visionary opponent of constitutional ratification may have imagined. The executive power is centred in him, *i.e.* all persons belonging to the administration are nominally appointed by him, and are really responsible to him. But in his appointments he is obliged, by custom, to follow the dictates of congressmen in filling most of the offices in the United States, though the Senate never refuses to confirm a member of the Cabinet. The Cabinet is a body practically unrecognized by the Constitution. Custom has determined that it shall be composed of the heads of the departments, who have no seats in Congress and do not direct legislation, as in England. As a Cabinet, they are an advisory executive body, but the President is not bound to follow their advice; as heads of departments, they are the administrative agents of the President.

The political party as a factor in the government of the United States.

Our government has become one by the people acting through political parties. The President is a party leader. Senators and representatives belong to some national party nominated according to well-recognized rules. The speaker of the House of Representatives, an officer barely mentioned in the Constitution, has developed tremendous power over the organization and legislation in the House because he is the party leader of the majority. Only the courts are free from partisanship, and that is because they have voluntarily and consistently refrained from considering political questions as such. Yet even the judges always belong to the same party as the President who appointed them. In the states and the cities, the organization of the party machinery needed for national elections has made it necessary to fight out every contest on party lines.

These are a few of the changes wrought in the national government by the unwritten Constitution.

Class rule in eighteenth century.

231. Popular Coöperation in Government. — In 1789 the United States was governed by classes. People could not vote unless they owned a certain amount of property and

had been for a long time residents of the state and district. Officials were by law usually required to own a much greater amount of property, and by custom they were ordinarily drawn from certain families. Except in the New England township, the local government was by no means popular, for elsewhere the town, parish, and county officers were either appointed by the state governments or chosen by a few persons.

Lack of suffrage restrictions at present.

To-day suffrage is everywhere practically universal. Religious qualifications were long ago abolished, when State and Church were separated, but the nation has become more rather than less religious. The few restrictions of time, residence, and citizenship for electors are essentials of good government. Office-holding is open to any one who has the personal qualities needed for winning popular favor. All of the chief positions in national, state, and local governments are filled by popular election, and changes in fundamental laws must meet with approval of the voters. The people coöperate in government largely through parties, but the control of those parties belongs to them; for no one that seeks to become a party dictator or "boss" can maintain his position in the long run without popular support. We have now as truly a government "of the people, by the people, and for the people" as ever existed, with most of the benefits and most of the faults inherent in democratic rule.

What that government is like we shall now proceed to consider a little more fully.

Economic Features of the New Nation (§§ 215–221)

1. Look up the income taxes and taxes on production during the Civil War; note the items included and rates levied. Why was there a great opposition to these internal taxes? Should the duties on imports have been reduced at once to correspond to the reduction on internal revenue?

2. Why are monopolies dangerous? Name any railways that might be considered monopolies. Are the evils of monopolistic control averted in these cases by government control?

3. How is a corporation formed in your state? Are there any provisions in state law that the capital stock must be paid up in full? What is meant by watered stock? Why may watered stock be injurious to the investor, to the corporation, and to the public?

4. Give, in outline, a history of our tariffs, indicating the principal objects upon which duties have been placed, and giving an idea of the rates.

The States (§§ 222–225)

1. What is the earliest instance you recall of the referendum in America? Give a short account of the development of the idea that the people should ratify laws framed by legislatures or conventions. Has the referendum ever been used in connection with national affairs? Account for your last answer.

2. What are the advantages of universal suffrage? the disadvantages? Is the suffrage of the present likely to become more or less restricted? In your opinion does the Louisiana constitution violate the United States Constitution? Who will decide whether it does, and in what way will the matter be tested? Give arguments for and against woman suffrage.

3. Give a history of the ballot. To what extent was it used in the colonies? What was the method of voting in Greece, in Rome, in England before 1884?

Foreign Affairs (§§ 226–227)

a. Cuba and the United States during the nineteenth century. Curtis, *United States and Other Powers*, index under Cuba; Latané, *United States and Spanish America*, chap. II; Callahan, *Cuba and International Relations.*

1. Make a study of the Spanish government in Cuba during the nineteenth century. What forms of taxation existed? What share did the people have in the government? In what respects was the government of Cuba better or worse than those of the South American republics?

2. Name the principal causes of the Spanish War. Trace, if possible, the growth of the idea of expansion. Was it originally the wish of the people or of the administration? What else could the government have done?

The Constitution at the End of a Century (§§ 228–231)

a. Changes in the Constitution since 1789 are treated by McMaster, *With the Fathers*, 182–221; Boutwell, *Constitution at the End of the*

First Century; and Tiedeman, *Unwritten Constitution of the United States.*

b. The national government of to-day is pictured by Bryce, chaps. IV, V, IX, XI–XIII, XVII–XXI, and by Ford, *American Politics*, chaps. XVIII–XXII.

1. Compare the forms of government, the powers of the different departments, and the part played by the people in governing in Great Britain and the United States in 1800 and in 1900.

2. Is our unwritten Constitution more or less important than the written one? How did the two compare in 1789? Which is growing more rapidly?

3. Is it desirable to keep the three departments of government as nearly coördinate as we can? Is it going to be possible to do so? What besides provisions of the written Constitution have helped to keep the executive and judicial departments independent of Congress?

PART II

GOVERNMENT

CHAPTER X

GENERAL CHARACTER OF AMERICAN FEDERALISM

General References

Burgess, *The American Commonwealth* (*Political Science Quarterly*, I, 9–35).

Crane and Moses, *Politics*, 223–264. On the tendencies of federalism.

Hinsdale, *The American Government*, 117–136, 236–247, 336–371, 418–422. Hinsdale gives excellent explanations of the principal features of the national government especially, with many historical references.

Bryce, *The American Commonwealth* (abd. ed.), 214–287. The best book for consultation on this chapter. Unexcelled for reference on all of Book II. Emphasis is laid on the government as it is and upon the methods of operation.

Wilson, *The State*, 467–550. An outline of particular value on the states.

Story (Cooley), *Commentaries on the Constitution*, chaps. XXXII–XXXV, XLIV–XLVII.

The Federalist, Nos. 39–46. *The Federalist* should be consulted on all of Book II as showing what was expected of the central government in 1788.

Burgess, *Political Science and Comparative Constitutional Law*, I, 142–154, 184–252. Volume II gives a very valuable comparative study of the governmental organization and powers in the United States, France, England, and Germany.

Hart, *Federal Government*. Summarizes and compares different federal governments. Appendix A gives detailed comparison. Invaluable for reference.

Ways in which modern States have been consolidated.

232. Centralizing Tendencies in Modern History. — All modern States have a central government and local governments. In some, the local governments are subordinate to the central government, and we then called the State centralized. In others, the local governments are practically independent of the central governments, *i.e.* neither one is controlled by the other, but each is directly responsible to the people. Most States at the present time are centralized, but they have not always been so. Almost without exception the local districts whose government is now completely under the central government were once more or less independent, as were the counties of Kent and Wessex in England, or Venice and Modena in Italy. But this independence was not lost all at once. The process by which these little states were united into large States was a slow one, often covering centuries. The unions have been largely voluntary, but they may have been entirely involuntary. The small states usually at first retained many privileges, as evidence of their former independent position, especially if they were consulted when they were joined to the large State. In many instances several small states united in a loose bond, or league, for protection against common danger. But these leagues have been transitory. Although the people were more attached to the small states than to the league, and although the small states at the beginning had more power than the central government, forces favoring decentralization have been no match for those in the opposite direction, and in time centralization has won, a large State has been formed, and the central government has grown stronger and stronger.

The decentralizing forces overcome.

Johnston, in Lalor, III, 787, 788.

233. Centralization in the United States before 1790. — The history of the struggle between centralizing and decentralizing forces in this country has already been discussed under the development of nationality. As elsewhere, the small states were formed before the large one was organized. During the colonial period these small political societies were unconnected with each other, except through

England. Their first union (the Confederation) was a league in which the states controlled the central government. This did not prove to be satisfactory, and after an existence of less than ten years an effort was made to replace it. Now, it was unreasonable to expect that a nation with a strong central government would be developed in a single decade, particularly when we consider how strong was the love of local self-government in America. In consequence, as a league had been found unsatisfactory, and as popular sentiment was strongly opposed to a powerful central government, a compromise was necessary. There was, accordingly, formed a Federal State, in which there should be two kinds of government, each exercising certain powers of sovereignty, and supreme within its own sphere. But the creation of this Federal State meant that every citizen living within the United States was not only a citizen of the state (commonwealth) in which he resided, but of the United States as well. He was bound to obey the laws of his state with regard to certain matters, and those of the United States with regard to certain others. He had certain rights which he possessed because he was a citizen of a state, but different rights which were the result of United States citizenship.

Integration of national power.

Cf. Crane and Moses, *Politics*, chap. XVIII.

234. Centralization since 1790. — If States are constantly growing, and if growth has everywhere else favored centralization, we may well ask whether the Federal State of to-day is the same as that of 1790. The answer is clear if we have followed the historical discussion of Part I. Theoretically, the Federal State has changed little. Actually, there has been a great shifting of power. The balance between the nation and the states has never been perfectly maintained. At first the states were much more important, because of their former semi-independent position. But new generations came upon the scene, who cared less for the history of their state than for the common interests which existed in their day. Gradually the central government has added power after power, not necessarily at the

expense of the states, for the Constitution has guaranteed the states full control within their own sphere of government, but because the nation and national interests are now much more important than the state and local affairs. Really, the states have been growing all the time, but the nation has grown so much more rapidly that when we compare the two, the states seem to have dwindled.

The national Constitution and centralization.

In this connection a word ought to be said about the national written Constitution, which, in a sense, created this Federal State, and which has been, more than anything else, responsible for its continuance. How perfect the division was which the Constitution made when it separated the sphere of the nation from that of the states is shown by the fact that the division is now almost the same as a hundred years ago, in spite of the great political, social, and economic changes of the century. This division was at the beginning an advantage to the central government, because the states were unwilling to leave to the United States government control over all national affairs. During the last half century the division has favored the states in two ways: (1) because we have at present more interests in common than a hundred years ago, and occasionally these interests are of such a nature that the Constitution leaves them to the states, although we feel now that they properly belong to Congress. (2) As the national government has grown stronger, it would have encroached upon the sphere of the states but for the written Constitution.

Fair national efficiency combined with local autonomy.

Sidgwick, *Politics*, 516–519.

Bryce, 248–253.

235. **Negative Advantages of Federal States.** — The great advantage of federalism is that it combines an efficient central government, controlling those matters of unquestioned common interest with complete self-government in the states regarding all other subjects. It would be almost impossible, if indeed it were desirable in a country so extensive as ours, to give the national government the right to regulate all affairs, general and local. If laws had to be made for localities, as is done in England and in France, especially if accompanied by the administrative centraliza-

tion of the latter country, the burden would be greater than the national government could probably bear. But even if a centralized government were possible, it could not properly care for the interests of every locality; and, more than all else, it would leave to the people a smaller degree of local self-government, which has always been the most effective spur to political interest, and the great bulwark of political and civil freedom.

Dangers of secession avoided.

One of the great faults of federal systems in general is that they tend to break up into sections. Under a central government exercising powers now belonging to the states, there would be much greater disaffection in different parts of the Union than under the existing system, and the danger of actual separation — for legal secession is no longer possible — would be much greater than at present. Again, if national laws were to be made for subjects that are now under the control of the states, our own history and the history of Europe show that to have good government under those laws they should be administered by national officials. While the choice of these might be left to the people of a locality, the officials would have to be responsible not to that locality, but to the central government. To call such a system local self-government, would be hardly less than farcical.

Civic advantages of local autonomy.

De Tocqueville, *Democracy in America* (Gilman's ed.), I, 107–122.

236. Positive Advantages of Federalism. — The advantages of a federal system are, of course, more clearly shown in the gains we have made than in the dangers we have avoided. Such governments as we possess at the present time demand a great amount of political intelligence, and have produced a degree of popular knowledge regarding political affairs among our citizens that is the surest guarantee that popular government will be good government. This is a direct result of leaving to the state complete autonomy, for the part played by the voting citizen in the conduct of state and local affairs is incomparably greater than that taken by a citizen of any European country in all of his governments.

Political experiments and experience of the states.

But aside from the advantage derived through the greater political intelligence of the voter, is the gain that has come from the experiments made by the states in new fields. The national progress that has come from innovations, tried by a few states, found satisfactory, and afterward adopted by the other states, can hardly be estimated. It is sufficient for our purpose to compare the actual extension of the franchise with what would have been possible had suffrage been regulated by national law, bearing in mind that it is illustrative of a hundred and one other subjects of more or less importance. From the historical sketch of Part I it must be evident that if the states could have made no laws regarding the franchise, many of the reasons that led the newer states to adopt manhood suffrage, even during the eighteenth century, would have had no influence whatever. The West adopted universal suffrage, principally because greater social equality existed there than in the East, and political equality was therefore natural. Then the West was anxious to aid in the development of its resources by attracting immigrants from the other states and from Europe, and the right to vote proved a very great inducement. The East was, consequently, obliged to grant similar privileges. Now, if the franchise had been regulated by national law, the older states would have compelled the central government to base suffrage on property. The social equality of the West could have exerted no influence till the West was as populous as the East, and population in that section would have increased less rapidly than it did, because the West could not have offered the right to vote as a bid to newcomers. When we realize that as late as 1840 more than one-half the people of the United States actually resided in the thirteen original states, we can realize the significance of this. We must not forget, however, that even the old states would undoubtedly, in time, have agreed to a modification of the suffrage, especially as agitation in the newer states would have favored its extension; but these changes must have

The suffrage.

occurred much later than they did even in the East. From this single instance we can see the tremendous influence exerted upon political and social progress by the federal system.

Inequalities in civil rights among the states.

Cf. Bryce, 243–247.

237. Disadvantages of our Federal System. — The disadvantages of our system are inseparable from the advantages. It is impossible to separate the powers of government into two sets, and distribute those powers to different governments, and yet have a central government as efficient in the conduct of all national affairs as a highly centralized national government would be. For example, a state may greatly restrict the privileges of the citizens within its boundaries, and yet the United States government cannot interfere unless the state has infringed upon the rights which the citizen has by virtue of his being a citizen of the United States, or unless the state took away his rights as a citizen of that state "without due process of law."

Weakness of the national government.

When the United States government makes a treaty with a foreign power, it is quite likely that some matters which seem to belong to state law will be considered. We are under obligations to the nation with which the treaty is made to see that the treaty is enforced; but if the United States authorities try to administer these parts of the treaty, they are thought to exceed their powers; so it is left to the state officials, who execute them or not as they see fit. In the New Orleans difficulty (1891), where several citizens of Italy were killed by a mob, the Italian government was informed that the murderers must be punished by the state of Louisiana, and that the United States had no jurisdiction in the matter; and this was done, when we had a treaty with Italy guaranteeing the rights of her citizens in this country, and in spite of the provision of our Constitution which makes treaties part of the supreme law of the land.

Increasing need of uniform legislation.

Probably the greatest disadvantage is that growing out of our continually changing economic and political conditions. We cannot draw between the state and national spheres of government a line that will be permanent.

Owing to the rigidity of the national Constitution, it is impossible to change the line with changing conditions. The liberal construction of the Constitution does this to some extent, but within certain limits. The central government has been powerless to enact a national divorce law, although the need of uniform legislation of this subject is fully recognized. At the present time, commissions from different states are constantly being held in order to arrange some plan by which the differences between the legislation of the states may be minimized. Were it not for the fact that the general principles underlying state laws are everywhere the same, and that there are but four or five groups of states with any great differences in detail, some action by an outside authority would be necessary for the proper conduct of ordinary business. In other words, if state lines are not prominent in everyday affairs, they must not mark important boundaries of legal systems, or they will have to be removed.

Enumerated and residuary powers.

Hinsdale, §§ 225–233.

Bryce, 225–232.

238. **General Distribution of Powers.** — After this consideration of the general characteristics of centralization and federalism in this country, let us proceed to go a little more into detail, in order to discover just what part of the work of governing is left by the people of the American Federal State to the national government, and what part to the state governments, with the limitations placed upon each. We find that the national Constitution of 1787 and its amendments define pretty clearly the sphere of the national government, and suggest the sphere of government left to the states. In that instrument, the attempt is made to grant the central government all powers that the states could not satisfactorily exercise, because united action was necessary. From the nature of the case, these powers belonging to the United States government were considered *delegated*, and were therefore *enumerated*, while those left to the states were to include all others. The latter are sometimes spoken of as *residuary* or *inherent* powers. This does not mean, as many have interpreted it, that

because the state possessed all powers not delegated, that the state was therefore sovereign. It would have been unwise, if not impossible, to enumerate all the powers of both state and national governments; and the much simpler plan was adopted of stating, in general terms, those classes of powers to be exercised by the national government.

Classes of powers.

We may therefore distinguish the following classes of governmental powers: —

I. Those granted exclusively to the national government by the Constitution of the United States.

II. Those reserved exclusively to the states.

III. Those powers exercised by either the nation or the states, usually called concurrent.

IV. Powers denied to the national government by the Constitution.

V. Powers denied to the states by the national Constitution, or to any particular state government, by the constitution of that state.

Expressed and implied powers.

239. **Sphere of National Government.** — The sphere of national government, in consequence, includes both exclusive and concurrent powers; but these are always delegated. Yet delegated powers may be either expressed or implied powers. No one nowadays denies that the United States government has the right to supplement the powers expressly stated in the Constitution, by such means as are reasonable and wise, to carry out these powers. That is, we are, in practice, broad constructionists of the phrase that Congress has the power "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers [Constitution, Article I, Section VIII, 1–17], and all other powers vested by this Constitution in the government of the United States or in any department or officer thereof."

Exclusive powers.

Nevertheless, it is generally admitted that the United States government does not have exclusive powers, unless the Constitution expressly states that the power granted to the United States government is exclusive, or unless a

power given the United States government is, at the same time, denied to the states, or unless, from the very nature of the power, it could not be exercised by both the nation and the states.

Concurrent powers.

The powers are concurrent if they are simply granted to the United States government without being denied to the states.

Powers delegated by the Constitution.

Hinsdale, §§ 341–418.

240. Powers exercised by the United States Government. — In order that the central government might be capable of maintaining an independent existence, it was given power to collect taxes of different kinds, almost without conditions. That crises might be met for which ordinary revenue is insufficient, power to borrow money was conferred. All care of international relations was given the United States government, and these powers were denied to the states in order that we should not be "one nation to-day and thirteen to-morrow." These included the right to send and receive ambassadors, make treaties, regulate foreign commerce, declare war, and protect our interests by raising an army and navy. All commercial interests not belonging to a single state were intrusted to the central government. Among these were the regulation of interstate commerce, making uniform such necessities as coin, weights and measures, and action regarding bankrupts. Domestic peace was assured by the control of the army and by the organization and use of the militia to execute laws of the Union, to suppress insurrections, and to repel invasions. Provisions were made for the punishment of crimes against the United States, or any of its laws, and for the proper enforcement of United States authority without the use of military power.

Territory may be acquired and governed, while the conditions under which new states may be admitted to the Union are under national control. In order that these powers should be real, the Constitution gave Congress the right to make the "necessary and proper" laws mentioned in the last section. This, coupled with the judicial

right to interpret the Constitution and the laws of the United States, has been ample authority to maintain and to extend the power of the United States government. Finally, the Constitution, the laws of the United States, and treaties are the supreme law of the land, and state laws contravening these are null and void.

Taxation.

241. Powers concurrently exercised by the United States or the State Governments. — Not all of these powers we have just enumerated are exclusive. If we apply, as a test, the criteria of exclusive powers given in section 239, we find that the general power of taxation may be exercised by either the central or the state governments. Yet there are limitations placed upon either one or the other in regard to certain kinds of taxes, *e.g.* the United States government cannot levy direct taxes except in proportion to the population, neither can it lay a duty on exports from the states at all, nor tax state property. The states cannot tax external commerce except with the consent of Congress and for the national treasury, nor can they tax national banks or national property. Otherwise, either government may tax what it pleases or borrow money, and it is only by custom that the taxes do not overlap.

Bankruptcies and militia.

Several classes of concurrent powers are those which are left to the regulation of the national government, but in which the states may legislate in case the United States fails to take any action. The subject of bankruptcies offers many examples of this state of affairs, for Congress has not seen fit to maintain a national law during most of our history, so the states have in the interim passed laws suited to their own needs; but these become invalid as soon as the central government acts. The case of the militia is somewhat similar. Many details of the elections of representatives and senators may be controlled by Congress, but in default of national laws the states do as they please.

United States and state courts.

In the concurrent jurisdiction of the United States and state courts we have an instance similar to these last classes.

This jurisdiction is concurrent if it comes within that conferred by the Constitution upon the national courts, except for the cases over which the Supreme Court has original jurisdiction or the inferior courts are given exclusive jurisdiction by act of Congress.

General character of state powers.

Wilson, *The State*, §§ 1088–1095.

242. **Sphere of State Activity.** — While the states are excluded, either by express prohibition or by implication, from the greater part of national affairs, they control all other subjects of government except those denied to all governments, and consequently reserved to the people. Lest there should be doubt in any one's mind on that point, the tenth amendment says, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively or to the people." In this amendment we find given the means of determining whether a power is rightfully exercised by a state, and this is done by finding out what does not belong to the state. If a power is given to the central government alone, or if it is prohibited to the states by the Constitution, it cannot be used; all other powers belong to the states, and can be exercised by the state governments unless the state constitutions forbid.

Private and criminal law.

This apparently vague and indefinite field in which the state is supreme is one of great importance, not only from the variety of subjects included, but from their personal relation to the individual. Practically all matters belonging to the criminal and to the private law are regulated by the states, including laws regarding property and the business and personal relations of one individual to another.

Administrative and socialistic functions.

The state has complete charge of all local government, of education, of the elective franchise, of most corporations, police duties, marriage and divorce, the poorer and delinquent classes, and public health. It is constantly brought into close touch with the individual. Legislation on these subjects, and the administration of the laws made upon them, may be left by the state to the state government or

the local governments; but in any case the control of the state over all of them is exclusive and absolute. It is in addition to the concurrent powers already mentioned.

The following passage from Wilson (*The State*, section 1095) shows clearly the importance of the state sphere: —

A comparison with England.

"A striking illustration of the preponderant part played by State law under our system is supplied in the surprising fact that only one out of the dozen greatest subjects of legislation which have engaged the public mind in England during the present century would have come within the powers of the federal government under the Constitution as it stood before the [Civil] War, only two under the Constitution as it stands since the addition of the war amendments. I suppose that I am justified in singling out as these twelve greatest subjects of legislation the following: Catholic emancipation, parliamentary reform, the abolition of slavery, the amendment of the poor laws, the reform of municipal corporations, the repeal of the corn laws, the admission of Jews to Parliament, the disestablishment of the Irish church, the alteration of the Irish land laws, the establishment of national education, the introduction of the ballot, and the reform of the criminal law. Of these, every one except the corn laws and the abolition of slavery would have been under our system, so far as they could be dealt with at all, subjects for state regulation entirely; and it was only by constitutional amendment made in recognition of the accomplished facts of the war that slavery, which was formerly a question reserved for state action, and for state action alone, was brought within the field of federal authority."

Methods used to attain these ends.

243. Purpose and Classes of Prohibitions on Government. — Prohibitions have been placed by the Constitution of the United States upon the different governments of this country for three separate purposes: (1) to prevent all action by any government on certain subjects; (2) to protect the states or individuals from interference by the national government; (3) to keep the states from infringing upon the powers given to the central government and demanding concerted action. The first object is obtained by prohibiting both to the national and the state governments the granting of titles of nobility, the passing of bills of attainder, and *ex post facto* laws on criminal subjects or

laws recognizing slavery. The second is gained by direct prohibitions or limitation upon the United States government; the third by prohibitions upon the states in the national Constitution. The sphere of activity from which all governments are excluded may be further enlarged by uniform action among the states. If, for instance, a certain subject belongs entirely to the states, and all the state constitutions agree in prohibiting legislation on that subject, or in permitting legislation only under certain limitations, that subject is then as much outside the control of government as is the granting of titles of nobility.

For the sake of the central government and citizens.

Hinsdale, §§ 434–445.

244. Prohibitions on the States. — That most of the prohibitions upon the states alone are for the purpose stated above is shown by the fact that in many cases the prohibition may be removed with the consent of Congress. States may not make treaties or compacts with other states or foreign nations, may not have a navy or army in time of peace, or lay imposts ordinarily, but they may, theoretically, do the last if Congress is willing. The states are absolutely forbidden to coin money, emit bills of credit, make anything but gold or silver a tender in the payment of debts, or pass a law impairing the obligation of contracts. Neither may they countenance involuntary servitude, except for the punishment of crime, nor deny the franchise to any one because of race, color, or previous condition of servitude. Finally, they may not abridge the privileges or immunities of citizens of the United States nor deprive any person of life, liberty, or property without due process of law.

For protection of individuals.

Hinsdale, §§ 559–568, 624–631.

Cf. §§ 558–560.

245. Prohibitions on the United States Government. — The most significant prohibitions placed by the Constitution upon the national government exclusively are for the protection of the individual. Congress is not allowed to define treason, for a definition of that all-important word is placed in the Constitution itself. General search warrants are forbidden, and the trial of an accused person is hedged about by minute provisions, that seek to give him

every chance to prove his innocence, and without delay. According to the Constitution no one can be "deprived of life, liberty, or property without due process of law, nor shall private property be taken for public use without just compensation." Neither is the privilege of the writ of *habeas corpus* to be suspended except in case of great danger. Congress cannot make a law that abridges freedom of speech, the freedom of the press, or the right of assembling or of petition. Religious tests are never to be required of United States officials, and Congress is not permitted to establish a state religion nor interfere with religious freedom.

To guard the rights of states.

Hinsdale, §§ 343, 403, 429–432.

There are other prohibitions or limitations less closely related to individual liberty, but intended rather to guard the states against discriminating legislation. No export duty can be levied by Congress, all duties on imports are to be uniform throughout the United States, and no commercial preference is to be given one state over another. When a direct tax is levied, it must be in proportion to the population as given in the last census. The danger of a military despotism is, as far as possible, avoided by the double provision that appropriations for an army cannot be made for a period longer than two years, and that no money can be drawn from the treasury except as appropriated by law.

They are both agents of the same sovereign.

Federalist, Nos. XLV, XLVI.

Bryce, 233–242.

246. **Interdependence of the National and State Governments.** — While the spheres of national and state governments overlap in some particulars, on the whole they deal with essentially different and mutually exclusive fields of activity. The state government is supreme within most of its sphere, the national government is supreme within all of its sphere, and yet neither is supreme in the sense that it is sovereign. Each is an agent carrying out the will of the real sovereign — the people of the United States. As each does certain things for the sovereign that the other cannot do, neither can exist by itself: they are mutually dependent. This interdependence is shown in many ways.

As just mentioned, the work of the Federal State can be accomplished by neither government alone. On account of the difference in the task set each, one cannot become subordinate to the other, *i.e.* the national government cannot become the agent of the states, nor the states mere administrative subdivisions of the nation, with their governments under the control of the central government, without destroying the Federal State as we know it.

Use of the state governments for national purposes.

The national government makes use of the states, or of the state governments, in the choice of many of its important officers, especially the senators; and the states may prevent the election of these officials, and might, by concerted action, make the organization of the national government impossible. But the bare fact that even in the most critical period of our history this has not been done, shows rather an actual dependence of the state upon the nation. Election must occur in localities for all the members of Congress, and, under the circumstances, the states were the best suited for this purpose as well as for alteration in the fundamental law of the land — the Constitution.

Each acts upon individuals.

The interdependence of the state and the national governments, with the lack of subordination of one to the other, is apparent when we consider that each acts upon individuals, and does not use the machinery of the other. For example, if an individual infringes upon state law, he is punished directly by the agents of the state; if he violates national law, the national government does not call in state aid, but looks after the matter itself. In the same way national taxes are collected by national officials, state taxes by administrative agents of the state. So the national government and the system of state governments is each complete in itself for certain purposes, but incomplete without the other for the great purpose it subserves — the government of the Federal State.

Nature of citizenship in the United States.

247. **Dual Character of American Citizenship.** — Since the individual is subject to the state government in certain matters, and has certain rights guarded by that govern-

ment, while he has different rights and obligations under the national government, it is customary to speak of the dual character of his citizenship. He is said to be a citizen of the United States, and also a citizen of a state.

Controversy over the subject before 1868.

Tiedeman, *Unwritten Const. of U. S.* 93–97.

There has been during our history a great deal of controversy over this subject of citizenship. Those who held that the states were sovereign, and that the Constitution was a compact, claimed of course that citizenship was only of the state, that there could not be such a thing as citizenship of the United States, and that the term "citizen of the United States," which occurred in the Constitution, was merely a convenient way of speaking of a citizen. The other class held that there was a citizenship of the United States distinct from citizenship of the state; but for three-quarters of a century it never succeeded, judicially or otherwise, in clearly defining its position. Before the Civil War there can be no doubt that the vast majority of the people held the state citizenship to be above that of the United States, if, in fact, they admitted that there was such a thing as the latter.

The XIV amendment and its interpretation.

Richman, J. B., in *P. S. Q.* V (1890), 104–123.

Tiedeman, *ibid.*, 97–109.

248. **Citizenship as defined in Fourteenth Amendment.** — The needs of the reconstruction period led Congress to propose a constitutional amendment, whose purpose was to recognize the freedmen as citizens, and protect them as such from the state governments. The amendment stated that "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the states wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." There was no longer any doubt of the dual character of citizenship, and the order shows that United States citizenship was not less important than state citizenship. But

what were the "privileges and immunities of citizens of the United States" which the states were forbidden to abridge? Did they include everything specified in the Civil Rights Bill of 1866 (§ 208), as the debates in Congress would lead one to expect, or was the object of the amendment merely to place beyond doubt the reality of United States citizenship, and not to increase the powers of the national government over civil rights? It was a momentous question affecting the very nature of federalism and the integrity of the states as such, for if the national sphere was to be so greatly enlarged, the balance between the nation and the states could hardly be longer maintained. The authoritative interpretation of the first sections of the amendment was given by the Supreme Court in the *Slaughter House Cases* (1873). The majority of the justices held the conservative view that the powers of Congress had not been increased.

The opinion of the court.

Thayer, *Cases in Const'l Law*, I, 516–531.

249. Significance of the Decision in the *Slaughter House Cases*. — The opinion of the court declares that before 1868 "the entire domain of the privileges and immunities of citizens of the states [with exceptions mentioned], as above defined, lay within the constitutional and legislative power of the states and without that of the federal government. Was it the purpose of the fourteenth amendment, by the simple declaration that no state shall make or enforce any law which shall abridge the privileges and immunities of *citizens of the United States*, to transfer the security and protection of all the civil rights which we have mentioned, from the states to the federal government?" "When, as in the case before us, these consequences [of giving the national government full control of civil rights] are so serious, so far reaching and pervading, so great a departure from the structure and spirit of our institutions; when the effect is to fetter and degrade the state governments by subjecting them to the control of Congress, in the exercise of powers heretofore universally conceded to them of the most ordinary and fundamental character; when in fact it radically changes the whole theory of the relations of the state and federal governments to each other and of both these governments to the people; the argument has a force that is irresistible, in the absence of language which expresses such a purpose too clearly to admit of doubt.

"We are convinced that no such results were intended by the Congress which proposed these amendments, nor by the legislatures of the states which ratified them."

The decision of the court based upon this opinion has never been overruled.

Dissenting opinions.

Four justices dissented from this opinion, holding that if the amendment did not alter the relation of the nation to the states, but merely declared what the law was, "it was a vain and idle enactment which accomplished nothing and most unnecessarily excited Congress and the people on its passage. With the privileges and immunities therein designated or implied no state could ever have interfered by its laws, and no new constitutional provision was required to inhibit such interference."

Prof. Burgess's view of the decision.

Burgess, *Pol. Science*, I, 224–230.

In this connection the opinion of Professor Burgess (*Political Science and Comparative Constitutional Law*, I, 225) is worthy of quotation. "I say that if history has taught anything in political science, it is that civil liberty is national in its origin, content and sanction. I now go further, and I affirm that if there is but a single lesson to be learned from the specific history of the United States, it is this. Seventy years of debate and four years of civil war turn substantially upon this issue, in some part or other; and when the nation triumphed in the great appeal to arms, and addressed itself to the work of readjusting the forms of law to the now undoubted conditions of fact, it gave its first attention to the nationalization in constitutional law of the domain of civil liberty. There is no doubt that those who framed the thirteenth and fourteenth amendments intended to occupy the whole ground and thought they had done so. The opposition charged that these amendments would nationalize the whole sphere of civil liberty; the majority accepted the view; and the legislation of the Congress for their elaboration and enforcement proceeded upon that view."

Status of citizens.

250. **United States Citizenship.** — For better or for worse, we have then a distinction between a citizen of a state and a citizen of the United States. If persons are born in the United States and subject to its laws, they are citizens of the United States and of the state where they reside. If they are naturalized according to the laws of the United States, they are likewise citizens. A citizen of one state who moves to another state becomes, from that fact, a citizen of the second state; and a person who is a citizen of the United States, and not living in any state, is a citizen of the United States, without being a citizen of a state. So

a citizen of a state is always a citizen of the United States, but the reverse is not necessarily true.

Privileges of United States citizenship.

What are the "privileges and immunities of citizens of the United States"? We should expect them to be the rights that the citizen has within the sphere belonging to the United States government, and such is the case. In the same *Slaughter House Cases* the Supreme Court has enumerated some of these: "The right of the citizen of this great country, protected by implied guarantees of its Constitution, 'to come to the seat of government to assert any claim he may have upon that government, to transact any business he may have with it, to seek its protection, to share its offices, to engage in administering its functions. He has the right of free access to its seaports, through which all operations of foreign commerce are conducted, to the sub-treasuries, land offices, and courts of justice in the several states.' . . .

"Another privilege of a citizen of the United States is to demand the care and protection of the federal government over his life, liberty, and property when on the high seas or within the jurisdiction of another government. . . . The right to peaceably assemble and petition for redress of grievances, the privilege of the writ of *habeas corpus*, are rights of the citizen guaranteed by the federal Constitution. The right to use the navigable waters of the United States, however they may penetrate the territory of the several states, all rights secured to our citizens by treaties with foreign nations, are dependent upon citizenship of the United States, and not citizenship of a state. . . . A citizen of the United States can, of his own volition, become a citizen of any state of the Union by a *bona fide* residence therein, with the same rights as other citizens of that state. To these may be added the rights secured by the thirteenth and fifteenth articles of amendment and by the other [part of first] clause of the fourteenth."

Some rights of state citizenship.

251. **State Citizenship.** — While no state can create citizenship by its laws, the larger part of the rights of citizens

are left to the supervision of the state governments, just as the sphere of state activity is larger than that of the central government. It would be difficult to enumerate all of these rights, but among the most important are protection by the state government in matters over which it has control, right to life, liberty, and property, except as restrained for the general good, right to make contracts, to sue and be sued, to inherit, purchase, lease, hold, and dispose of real or personal property, exemption from unjust taxation or unusual fines or penalties.

Voters and citizens.

The franchise is not a right of citizenship. It is a political privilege conferred by a state upon such of its members as it deems fit to exercise such a privilege. *Voters and citizens are not the same.* There are usually more of the latter, but a state may confer the right of suffrage upon aliens if it wishes. It may also give the alien the rights of state citizenship, though it cannot make him a citizen.

Constitutional restrictions of state citizenship.

There are two important restrictions placed by the national Constitution upon the states in their dealings with its citizens. (1) "The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states." That does not mean that if a citizen of New York becomes an actual resident of Alabama he is entitled, under the laws of the latter, to any privileges he may have had in New York, but merely that Alabama must give him all the rights she confers upon her own citizens. She may not discriminate against him as she may against an alien. (2) No state shall "deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." The last clause is not intended to make it impossible for a state to give a man more rights than a child, but simply to see that the laws shall be applied without injustice to any.

Cooley, *Const'l Law*, 195–197, 256–259.

Acquired citizenship.

252. **Naturalization.** — As stated above, citizenship is acquired by birth or naturalization. The courts at present

hold that Indians on reservations are not "born in the United States" in the sense intended, for they are, in a peculiar sense, subject to our jurisdiction. But children of aliens, like the Chinese, who cannot become naturalized, may be citizens by virtue of birth in this country. Children of American citizens who are born abroad are considered citizens, but their children are not unless the parents (who were born abroad) reside for a time in this country.

Process of naturalization.

Hinsdale, §§ 383–385.

Brit. and Amer. Encyclopedia of Law (2d ed.), VI, 19–29.

According to our present naturalization laws, only persons of the white and black races can be naturalized. For this a residence of five years is necessary. First, the person goes before any court of record and declares his intention of becoming a citizen; then, at the end of the five years, provided it is two years after making the declaration, he proves to the court that he has resided in this country that length of time, swears to support the Constitution, and renounces allegiance to the State of which he was formerly a citizen. His wife and children become citizens without taking out separate papers.

Disappearance of a tendency to worship the Constitution.

253. **The Permanence of American Federalism.** — Although Americans are justly proud of their national political institutions and the great document which provides for them, it can be truthfully said that there is no longer a real "worship of the Constitution." This disappearance of blind admiration is not to be regretted, as it enables us to discriminate between the strong and weak points of our political system, and makes it possible to look the situation squarely in the face. Such frankness and honesty of judgment are necessary, if we are to properly adapt our institutions to changing conditions, so as to avoid future dangers.

The Constitution as a conservative force.

From what has already been said, it is perfectly evident that the United States is a prominent example of progress in all lines of development. We saw in the introductory chapter that unless the institutions of a country reflect the changes which occur within it, the time will come when change will be brought about by revolution. Is there not danger that our national Constitution, which made the

creation of a Federal State possible, and which has been the great supporter of federalism for a century, may seek to maintain a form of federalism our country has outgrown? Unquestionably, the relative importance of the states and the nation is not what it was a hundred years ago, or fifty years ago. Nor will it be the same fifty years hence as it is to-day. How does our Constitution provide that it may not be outgrown?

Amendment of the Constitution.

Changes in the Constitution occur in several ways: by actual amendment, by development of the unwritten constitution, which modifies or supplements the original provisions, and by different interpretations. With three exceptions the changes since 1804 have been by the two latter methods, but they are ill adapted to meet great crises. The Constitution must, then, be amended by law or by force. Fortunately for most cases, but unfortunately for others, the legal process of amendment is very difficult.

Dangers in the method of revision.

Burgess, *Pol. Science*, I, 143–154.

Amendments may be proposed by two-thirds of both houses of Congress or by a convention called at the wish of two-thirds of the state governments. They are part of the Constitution when ratified by legislatures or conventions in three-fourths of the states. Now, it is possible for an amendment to be defeated by states that in 1900 had less than one-twentieth of the population of the United States, and it would not be possible to legally abolish equality in the Senate if fifty thousand people objected. To admit that overwhelming majorities demanding national reform would be balked by such numbers, is absurd. On the other hand, amendments might be passed by states whose population was in 1900 but forty-five per cent of that of the whole country. The danger that a minority should alter the fundamental law is not great, but these very illustrations show that constitutional amendment at the present time does not seem capable of giving the Constitution sufficient flexibility.

254. **Conditions affecting Federalism.** — As it is ordinarily useless, and often dangerous, to assume the rôle of prophet,

Commercial and industrial conditions.

we may simply consider one or two things that may affect federalism in the future. Commerce has had much to do in consolidating States, and is the most important bond between nations. It tends to become more rather than less important. Industry, with its great concentration of capital in recent years, is aiding commerce in the United States to break down state lines. Uniform policies are becoming more and more necessary in different commonwealths, and the need of uniform policies in 1787 produced the federal Union.

New international conditions.

So far in our history our foreign relations have not been important, but it is hardly possible that our altered position of recent years shall not bring us into close touch with powerful members of the family of great nations. To conduct foreign affairs with skill we must sacrifice, to some extent, the democratic idea of government by the people and the federal idea of division of power. In other words, international success may depend on great centralization of power in unfettered officials, chosen not because they represent the people, but because of unquestioned capacity.

There are so many things about which the feeling to-day is so much more national than it was half a century ago that it is unnecessary to enumerate them. If the states will voluntarily adopt more uniform laws on such subjects as marriage and divorce, holding and taxation of property, definition and punishment of crimes, and regulation of corporations, national control will be less necessary; but radical differences in state law and procedure will be less readily overlooked in the future. Only that future can decide whether the United States is "an indestructible union of indestructible states," as we fondly hope; but we can predict, with some degree of confidence, that many decades hence the powers of sovereignty exercised by the national and the state governments will not be essentially different from those exercised by each at the present; that is, there seems good reason to believe that in this country federalism will be permanent.

QUESTIONS AND REFERENCES

Centralization and Federalism (§§ 232–237)

a. Centralization in France. Historical: Adams, *European History*, 212–224, 337, 355–364; Wilson, *The State*, §§ 351–397; Lacombe, *The Growth of a People*, 108–167.

b. Government: Wilson, §§ 398–475; Burgess, *Political Science*, II, 94–105, 131–132, 288–306, 352–355; Lowell, *Governments and Parties in Continental Europe*, I, 1–65; Goodnow, *Comparative Administrative Law*, I, 83–88, 266–294.

1. Show how force, voluntary union, and gradual consolidation aided in centralization in Great Britain; in France; in the United States.

2. Compare the political centralization of England and France with that of the United States. To what extent are the counties of England and the departments of France free from control by the central government?

3. Mention two or three subjects besides suffrage in which state action has been better than national law would have been, and try to show why.

4. Name instances where the innovations by the states have been a disadvantage to the United States. Is complete state autonomy more or less desirable than fifty years ago, *i.e.* is local self-government more or less necessary in later than in earlier stages of a country's growth?

5. If a treaty is part of the "supreme law of the land," should it not be administered by national officials or enforced by national courts? If so, cannot the national government infringe upon the rights of the states? Are the rights of aliens properly or entirely under state control? Would a constitutional amendment be necessary to give our central government power to enforce every provision of all treaties?

The Nation and the States (§§ 238–246)

a. Make a comparative study of the distribution of powers in countries having dual governments, consulting Crane and Moses, *Politics*, 253–264 (general); Woolsey, *Political Science*, II, 166–258; Wilson, *The State*, §§ 489–557, 636–728, 1016–1022; Freeman, *Federal Government in Greece*; Vincent, *State and Federal Government in Switzerland*, chap. III; Moses, *Federal Government in Switzerland*, chap. III; Beach, "The Australian Constitution," *Political Science Quarterly*, XIV, 663–680; Hart, *Federal Government* (United States, Switzerland, Germany, Canada).

1. Compare the distribution of power between the central government and the states in the United States, Canada, and Australia. Where are the "residuary" powers in each case?

2. Mention several instances of the use of implied powers by the national government. Can Congress constitutionally build a bridge across the Delaware River? Give your reasons in full.

3. Name all the exclusive powers of Congress you can think of which are not denied to the states.

4. If a new national Constitution were to be framed this year, what additional powers, if any, should be granted Congress, in your opinion?

5. Should the powers concurrently exercised by the nation and the states be increased or decreased in number, and why?

6. Prove that the sphere of state activity is larger than it was a hundred years ago, or show that the statement is untrue. What powers, if any, have been transferred from the states to the nation during the nineteenth century?

7. Study the history of the provision that prohibits the states from passing laws impairing the obligation of contracts. Why was it inserted in the Constitution? how has the clause been interpreted, and what influence has it had?

American Citizenship (§§ 247–254)

a. Constitutional amendment. *England:* Wilson, *The State*, § 917; Burgess, *Political Science*, I, 138–141. *France:* Wilson, §§ 399, 410, 411; Burgess, I, 168–173. *Germany:* Wilson, § 499; Burgess, I, 155–167.

b. United States, NATIONAL: Wilson, §§ 1262, 1264; Burgess, I, 142–154; STATE: Wilson, §§ 1101–1107; Bryce, 302–304; Cleveland, *Democracy*, 111–126; TEXTS OF CONSTITUTIONS, in *A. A. A.*; some in *Statesman's Year Book;* "State Constitutions," in Poore's *Charters and Constitutions*, 2 volumes.

1. Name some of the civil rights now under the control of the states that would have been given Congress had the *Slaughter House Cases* been decided the other way. Has the decision in these cases been accepted by the country as correct? why? Will the decision in the end aid or injure Federalism? why?

2. Tell whether the rights of a citizen would be protected in the following cases because of state or United States citizenship. Give reasons. (*a*) In inheriting property; (*b*) if injured in China; (*c*) if on trial for forging a note; (*d*) when attempting to make another keep a contract; (*e*) if condemned to be hanged for stealing something to eat; (*f*) if denied right to testify in a civil suit; (*g*) if de-

frauded by an agent; (*h*) if tried without a jury for treason; (*i*) if denied the privilege of the writ of *habeas corpus* in time of peace; (*j*) if taxed by a state for importing goods; (*k*) when seeking to gain money due from an employer.

3. How would the method of amending the Constitution probably be different if a new one were to be adopted by a new convention at the present time? Why is the clause referring to amendment the most important one of the Constitution?

4. Is any country ever governed wholly by the people living at any particular time? Should it be? If the latter, why is a country bound to follow the method of constitutional amendment adopted by a previous generation? Is there greater danger of being too conservative or too radical?

CHAPTER XI

THE SENATE

General References

Hinsdale, *American Government*, 160–193.

Bryce, *American Commonwealth* (abd. ed.), 71–93.

Hamilton, Madison, and Jay, *The Federalist*, Nos. LXII–LXVI.

Story, *Commentaries*, chaps. VIII, X–XIII.

Wilson, *Congressional Government*, 193–241. Professor Wilson's essay gives a very striking account of the workings of Congress. Written when executive influence was not great. Favors English system.

McConachie, *Congressional Committees*, 259–348. An inside view of the way Congress does its business.

Meigs, *Growth of the Constitution*, 68–122. Resolutions of convention of 1787 on Senate classified.

Alton, *Among the Law-makers*. Gives, in popular form, accounts of particular events which illustrate the methods and processes of Congress.

Dawes, *How We Are Governed*.

Lalor's *Cyclopedia*. Articles by Spofford on "Parliamentary Law," by Johnston on "Senate," by Eaton on "Confirmation by the Senate," and the articles on "Congress."

Periodical literature. Consult indexes under Senate and United States Senate.

Reasons for its bicameral organization.

Story, *Commentaries*, §§ 555–558, 562–570.

255. The Congress. — According to the Constitution all legislative power granted to the United States government is vested in a Congress of two houses. These houses are constituted in different ways, and represent, in theory, the states and the people respectively. The upper house, or Senate, is made up of two representatives from each state, chosen by the legislature of that state, while the members of the lower house are chosen in districts of nearly equal

population. The objects of having the Congress bicameral are twofold: the one historical, the other practical. At the time the Constitution was framed almost all of the states had bicameral legislatures, and the English Parliament was made up of two houses. The convention therefore but followed Anglo-Saxon precedents. Yet it would hardly have done so but for the decided advantage which it was thought the two-chambered legislatures had over a unicameral one. With the preference that then obtained for checks and balances, the convention would probably have favored two houses had they been constituted in the same way; but as they were radically different in composition, and were thought to represent just as different interests, the value of two houses was admitted by practically every member. Although there has not been the great difference between the Senate and the House that most expected, and while they have often blocked necessary legislation, there is little doubt that we have had better government and more perfect laws because all power was not intrusted to one house.

256. The Bicameral Legislature in History. — It cannot be truthfully said that the bicameral system is the most natural one, in spite of its almost universal use at the present time. Nearly all of the continental countries had three houses or estates, as in France, or four houses, as in Sweden, and the bicameral legislature has been adopted by them during this century because of its practical value.

On the continent (Europe).

Wilson, *The State*, §§ 375, 794.

When Edward I called his model parliament in 1295, — the first one worthy of the name, — there were four "estates" represented: the nobility, the clergy, the lesser nobility or knights, and the burgesses or townsmen. As the clergy either abstained entirely from attending or threw in their lot with the nobility, and the knights and burgesses voted together, these four estates became in less than a century a House of Lords and a House of Commons.

In England.

Wilson, §§ 848–853.

The first colonies were largely under the legislative control of a governor and assistants. The people were first allowed a share in the government, when they chose representatives who sat with the assistants, and were consulted on certain matters. Gradually these two bodies came to sit apart until, in 1787, Pennsylvania and Georgia were

In America.

the only ones that had a single chambered legislature, and each of these added another house before 1791. All of the newer states have had two houses from the beginning. As the Continental Congresses were intended to be diplomatic bodies, they were not separated into two parts, and their successor, the Congress of the Confederation, though given power to make laws, was made up in the same way. The failure of the Congress, as contrasted with the success of the legislatures in the states, did much to strengthen the desire for a national legislature of two houses. So after it was decided to make a new constitution, the convention was all but unanimous.

Long and short sessions.

257. Sessions of Congress. — The life of each Congress is the same as the term of a representative, or two years, and they are numbered accordingly, as, *e.g.* the fifty-fifth Congress began its career with March 4, 1897, and closed it on March 4, 1899. It is very unusual for any Congress, however, to be in session more than half of that time. It has two regular sessions, popularly known as the long session and the short one. The long session begins at noon on the first Monday of December in the odd years, and continues until both houses agree to adjournment, which occurs usually in the early part of the summer. The short session begins on the first Monday of the following December, and continues till the 4th of March. Congress may adjourn sooner if the Senate and the House agree; but nowadays that is never done, and the last days of the short session are usually the busiest ones Congress ever has. On extraordinary occasions the President calls an extra session by issuing a proclamation, naming the date and setting forth the reasons for his action. Congress may itself provide for such an extra session between the regular ones by adjourning to a fixed date earlier than December. In case the houses disagree as to the time of final adjournment, the President may step in and set a date.

Special sessions of Congress.

Special sessions of the Senate.

The Senate is always convened, usually without the House, immediately after the inauguration of a President, for the purpose of acting upon executive appointments. It may also be called together in order to attend to treaties of importance.

258. Provisions Common to Both Houses; Privileges and Disabilities of Members. — Article I of the Constitution makes the following regulations for Congress and congressmen: — Hinsdale, §§ 312–330.

"Section V. [1.] Each house shall be the judge of the elections, returns, and qualifications of its own members; and a majority of each shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members in such manner and under such penalties as each house may provide. Membership and quorum.

2. "Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member. Rules and control of members.

3. "Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal. Journal.

4. "Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting. Adjournment of one house.

"Section VI. [1.] The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house they shall not be questioned in any other place. Compensation and privileges of members.

2. "No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office." Disabilities of members.

259. Compensation of Members. — The members of Congress under the Confederation were paid out of the state treasuries. This increased their dependence on the legislatures, and, as they were subject to instruction and recall, made them mere delegates of the states. The constitutional convention was composed of men who had almost without exception served in the old Congress. They appreciated these evils, and realized the need of making all persons connected with the new United States government independent of the legislatures. There was indeed a movement to have the members of Congress, like those of Parliament, serve without pay, but this did not receive sufficient The subject in the convention.

Meigs, *Growth of Const.*, 96–100.

support. Accordingly, the congressmen, judges, and civil officers were to be paid from the national Treasury, and Congress, under certain limitations, was to decide as to the amount.

Pay of public officials in democracies.

All democratic communities have opposed small salaries for any official or subordinate, and have always refused large salaries without regard to the value of the service. While it may not be correct to say that in the United States minor officials are overpaid, it cannot be denied that the salaries for positions of prominence have been absurdly low. This attempt to equalize salaries may be very democratic, but is ruinous to good government; for a person may be tempted to take a public position either for the honor and the power it gives or for the compensation. When the pay is but a small fraction of what a man of the same intelligence would receive in other lines of work, and the power wielded is very limited, men of mediocre talent only will give their time for the public. If this continues for some time, whatever honor may have attached to the position at the first gradually disappears. So democracy, to satisfy an ideal, is very often content with poor servants.

Pay of congressmen (1789–1910).

Hart, *Actual Gov't*, 227–229.

Gauss, *Am. Gov't*, 43–44.

The pay of congressmen at the present time is $7500 a year, with extra allowance for travelling expenses, called "mileage" of ten cents per mile to and from sessions. In 1789 the pay was $6 a day. Later it was $8. The salary was placed at $5000 in 1865. On the last day of the forty-second Congress a bill was passed substituting $7500 for $5000. This was a gift to each congressman, under the guise of pay for the two previous years, because an increase of salary applies to the existing Congress. So unpopular was this "grab act" that it was repealed at once, and it was not until 1909 that an act was passed granting for all future congressmen $7500 per year and increasing the annual salaries of the speaker and the vice-president to $12,000. Extra compensation is given in the form of allowances for clerks, by free delivery of mail on public business and by allowance of money for stationery and of large numbers of government publications and free seeds. Although this compensation seems liberal to many constituents, it will not cover expenses if the congressman's family resides in Washington.

Introduction of bills.

Spofford, A. R., in Lalor, III, 71–94, esp. 75, 76.

260. Method of Legislation. — Congress exercises its powers by passing through both houses (a majority of each being present) bills or joint resolutions, which, when signed by the President, become laws. The usual form of a bill is: "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled." A bill may be first passed by one house

and then considered in the other, or it may be introduced simultaneously in both houses. If it is introduced by an individual who is not, in doing this, representing a committee, it is read by title, and usually referred to the appropriate committee, who report upon it later or not as they see fit. It is usually "killed in committee." When a bill is reported by a committee, it has to be read in all three times; and if there is any debate upon it, this debate and the proposal of amendments takes place between the second and third readings or after the third reading.

Methods of voting.

The vote upon a bill, or upon a motion, order, or resolution, may be taken in one of three ways: (1) by calling for the ayes and noes, the presiding officer deciding by the sound; (2) by a "division" or rising vote, when the members are counted; and (3) by calling the roll of the members of the House at the request of one-fifth of the members, and entering the vote on the record.

The bill after passage by one house.

When a bill has been passed by one house, it is signed by the presiding officer and sent to the other, where it goes through the same process, unless it has already done so. It is then sent to the President. If he signs it, or fails to sign it, within ten days, provided Congress has not meanwhile adjourned, the bill becomes a law. If the President disapproves the bill, he returns it, with his objections, to the house in which it originated.

Distinction between bills, orders, and resolutions.

Professor Hinsdale gives (p. 338, *American Government*) these differences between bills, orders, and resolutions. He says: "A bill is a form or draft of law presented to a legislative body, but not yet enacted into law. . . . Mr. Jefferson thus distinguishes between an order and a resolution. 'When the house commands, it is by an order. But facts, principles, and their own opinions and purposes are expressed in the form of resolutions.' Joint resolutions have the resolving clause, 'Resolved by the Senate and the House of Representatives.' Joint resolutions are not distinguishable from bills, and are subject to the same rules. Other forms of resolutions are resolutions by the separate houses and concurrent resolutions. Were it not for this clause [Art. I, § 7, cl. 3], Congress might defeat the operation of the preceding one by calling its acts motions, votes, or resolutions, instead of bills."

Three kinds.

Lodge, *Hist. and Pol. Essays*, 169–179.

261. Difficulties in passing Laws. — The usual difficulties in passing bills are of three kinds: (1) they may occur in either house when the bill is first under consideration; (2) they frequently arise if the houses desire different features for any bill; (3) they are caused by executive veto.

Filibustering.

Bryce, 101–103.

In the first instance the opposition to a measure may come either from the minority or the majority. The party out of power seeks to hinder legislation or prevent it altogether. This "filibustering" may take the form of calling for the roll of members on unimportant amendments, making lengthy speeches (in the Senate, which has never adopted the "previous question"), and of remaining away from the House so that a quorum is lacking. So effectively did the last method succeed in blocking legislation in the first weeks of the fifty-first Congress, that Speaker Reed insisted upon counting as present Democratic members who were in attendance, but did not vote. This rule is now used by every House of Representatives. Thus the lower house, which also employs the "previous question" in order to stop discussion and bring a measure to a vote, has excellent control of debate.

Opposition within the majority party.

A bill may meet with the approval of but a portion of the majority, and, if a party measure, its success depends upon the ability of its framers to win over their associates. This may be done by what is known as "log rolling," the principle of 'you help me with my bill and I will help you with yours,' or by calling a caucus, if the bill is very important, and obtaining an indorsement of the bill. This enables the leaders to whip the refractory members into line much more easily than would be possible without the caucus; for members dislike to vote against their party under such circumstances.

Disagreement between the houses.

Bryce, 140–142.

262. Conference Committees. — Another difficulty, which is often quite serious, may arise from a disagreement between the two houses. A favorite measure of one may be defeated by the other, or not even treated with consid-

eration, session after session. Amendments may be added to a House bill by the Senate, or the reverse, which alter its character or are objectionable for other reasons. When the measure is of sufficient importance to justify it, a conference committee is appointed, made up of an equal number from each house, who, if possible, agree upon a compromise and seek to persuade their own chamber to adopt the new bill. In the majority of cases this method is successful, but on many important subjects even this has failed to break the "deadlock."

McConachie, *Cong. Committees*, 245–253.

263. Congress and the Veto. — In order to pass a bill over the President's veto it is necessary to secure a two-thirds vote of the members present, the vote being taken by calling the roll and recording the ayes and nays. As a two-thirds vote is not always easy to get, and as the reasons given by the executive have weight with at least a few of the members, it is unusual for either house to repass a vetoed bill, and more unusual for both houses to do so.

Disagreement between Congress and the President.

Hinsdale, §§ 335–339.

Bryce, 163–165.

Those bills that are sent to the President during the last ten days of Congress are subject to an absolute negative, commonly known as the "pocket" veto. As they cannot be returned within the ten days allowed, the Constitution provides that they do not become laws unless actually signed by the President. He can thus prohibit legislation by simply ignoring it. This is a greater evil than it would be but for the procrastinating spirit of Congress, which often leaves one-quarter of the bills of a session to be hurried through during these last ten days.

264. Composition of the Senate. — The most permanent part of the Constitution is that which says that no state shall be deprived of equal representation in the Senate without its own consent. Each state has two members chosen by its legislature for a term of six years. One-third of the senators retire every two years, so that at least two-thirds are always old members, accustomed to the work of the Senate and familiar with the routine of business. As a matter of fact, reëlection occurs so frequently,

Its permanence and stability.

especially in older states, that the proportion of new men is usually less than one-quarter. This makes the Senate seem like a permanent body, and yet all the time new life and vigor is being infused into it. There is an element of dignity and stability of the highest value in developing and maintaining a continuous legislative policy, not unmindful of public opinion, but little swayed by temporary influences. These characteristics of the Senate especially adapt it to the duties granted to it alone.

265. The Upper House in Other Countries. — The second chamber of the national legislature in Great Britain, France, and Germany vary greatly in numbers, election, and power from each other, and from the Senate of the United States.

The British House of Lords.

Wilson, *The State*, §§ 911–915.

The British House of Lords is made up of a number of different elements. There are sixteen Scottish peers elected for a single Parliament by all the peers of Scotland. Ireland sends twenty-eight peers, who are chosen for life. England and Wales are represented by certain archbishops and bishops and by about five hundred hereditary peers. English peerages can be created at any time by the ministry. The part taken by the Lords in ordinary business may be judged from the necessary quorum of six members. As a matter of fact, about fifteen or twenty persons give their entire attention to the work of legislation and control the affairs of the house. Since the Reform Bill of 1832 abolished the "rotten boroughs," which were owned by the peers, the lower house has gradually usurped the place of the Lords, until now the upper chamber would not dare to continuously oppose a measure passed by the Commons and desired by the English people.

The French Senate.

Wilson, §§ 406–409.

In France the Senate numbers three hundred members, chosen in the departments for a term of nine years, one-third retiring every three years. Election is from departments and is indirect, and the electoral body is peculiar in that it is composed of the members to the lower house — Chamber of Deputies — from that department, and of what would correspond to our state legislatures and county boards of supervisors. The number, term, and mode of election of senators can be altered at any time by the passage of an ordinary law. In legislation the Senate is much less important than the Chamber of Deputies, although it has legally as great power as the latter. It is seldom consulted by the ministers in outlining their policy, and when it has refused to follow the lead of the deputies in matters of moment, has always been brought to terms by its stronger brother.

The German *Bundesrath* is as unlike the corresponding houses in England, France, and the United States as it can be. It is the smallest body of the four, as it consists of but thirty-eight persons. It is also the most powerful. The members are in reality delegates of a diplomatic character, subject to instruction and recall, but representing the princes of the different states in whom, according to the German theory, sovereignty resides. The states are not equally represented; but Prussia, which has over half the population of the empire, has seventeen members to six for the next largest kingdom, and one each for the seventeen smallest. The *Bundesrath* has very complete legislative and other duties, and is, in many ways, the government.

The German *Bundesrath*.

Wilson, §§ 500–515.

266. Qualifications of Senators. — There are certain minimum requirements prescribed for senators by the Constitution. They must be at least thirty years of age, have been citizens of the United States for nine years, and inhabitants of the states for which they are chosen at the time of the election. The unwritten law has not added to these qualifications, but by custom senators are usually drawn from certain classes. Promotion of representatives who have shown exceptional skill in the House is less common than formerly, but these congressmen still furnish a large part of the new senatorial timber. State party leaders, many of whom have never held other public offices, are often chosen; and the third class is made up of prominent business men who have made their mark outside of politics.

Legal and actual requirements.

Story, *Commentaries*, §§ 728–732.

267. Senatorial Elections. — The place of holding elections is entirely under the control of the state legislature, but the time and manner of election may be prescribed by Congress. Before 1866 everything was left to each state, and not only great differences existed, but confusion and disorder were often the result. On July 26 of that year Congress passed an act, which is still in force, regulating details of senatorial elections. On the second Tuesday after the state legislature met and organized, each member of each House was to name a person for senator by a *viva voce* vote. The next day the two houses were to meet in joint assembly, a majority of each house being present, and vote in the same way. If no one had a

Method of election.

Bryce, 73–74

majority of the votes, this was to be repeated each day till a senator was elected.

Vacancies.

In case a vacancy occurs between sessions of the legislature, the governor may appoint some one until the next legislature shall choose a senator in the way just described. But the Senate has never fully admitted the right of a governor to appoint a senator when the legislature has had a chance and yet fails to choose one; and its recent decisions have all been adverse.

Caucuses.

While there is no law on the subject, and custom varies greatly, the members of any state legislature belonging to the party in control usually hold a caucus for the purpose of selecting a candidate. If the action of the caucus is binding, it gives a great power to a majority of a majority in cases where a candidate has nearly enough votes, but not quite a majority of the whole.

Popular election through constitutional amendment.

Mitchell, in *Forum*, XXI (1896), 385–396.

Haynes, J, in *J.H.U.S.*, XI, 547–560.

268. Proposed Changes in Election of Senators. — Of late years there has been considerable discussion concerning the Senate and the election of senators. It is felt that instead of becoming more representative of the people, senators are growing less so. It is urged that so long as choice is left to the legislature, corruption and bribery will be common and the wishes of the people ignored. Constitutional amendments transferring the election to popular vote have been proposed, and have been indorsed by two-thirds of the House of Representatives more than once; but the Senate seems satisfied with the present method, and they have never been passed by that body.

Popular election through direct primaries.

R. of R., 35 (1907), 748–751.

In some states senatorial candidates are nominated before the election of members of the legislature. The famous Lincoln-Douglas campaign of 1858 was a notable example. Since 1900 most of the states have adopted some form of nomination of senatorial candidates in connection with the direct primary (§ 553), and in one, Oregon, by a combination of direct nomination of the senator and pledges exacted from candidates for the legislature that they will support the senatorial nominee who has the largest vote, irrespective of

party, a legislature of one party may choose, in fact, has chosen, a senator belonging to the opposite party — practically and constitutionally popular election.

The Vice-president.

Story, *Commentaries*, §§ 1450–1452.

269. Officers. — The presiding officer of the Senate is the Vice-president of the United States, who has no vote unless the Senate is equally divided. His power is in sharp contrast with that of the speaker of the House, as he appoints no committees and has no direct influence over legislation. His qualifications are the same as those of the President, for he must be prepared to take the latter's place; but the duties connected with the office are so few, and his position of so little importance, that it is difficult to secure men of prominence for the place. The danger from men of little capacity becomes real, of course, only in case of the death of the President.

Other officers of the Senate.

The Senate always chooses one of its own members, known as the president *pro tempore*, who presides in the absence of the Vice-president, and who, if the latter be removed by death, becomes a regular president of the Senate. He does not, however, become Vice-president of the United States. Formerly he might even become President, if both the presidency and the vice-presidency were vacant; but by law of Congress (1886) the succession now belongs to the Cabinet (§ 335).

The Senate has a secretary with a score of assistants, a sergeant-at-arms who maintains order, a postmaster, a doorkeeper, and a chaplain. Each committee has one or more clerks, and each senator has a private secretary who is paid out of the public treasury.

Composition.

McConachie, *Cong. Committees*, 266–272, 289–294, 321–326.

270. The Committees of the Senate. — The Senate transacts most of its business through the committees. There are fifty-five standing committees and a number called special, with memberships varying from five to fifteen. These committees were at first chosen by ballot in the Senate, but the method proved unsatisfactory, and since 1845 they have been selected in this way: the political party that is to control the organization of the new Senate holds a caucus, and agrees to a list of committees in which all of

the important chairmanships belong to them. They retain a majority on the most important committees, but not all; and they may assign to their opponents or to third parties a few minor places as chairmen. When possible, they secure the consent of the rival party to the list before it is proposed in the Senate; and, if they cannot, the appointment of the committees is delayed till the opposition is satisfied with its share. In the meantime the old committees are continued until the new ones are selected.

Important committees.

See also McConachie, 339–343.

The most important committees deal with the special duties of the Senate. That upon Foreign Affairs may be placed first because of its connection with the executive in all our international relations. The Commerce, Finance, Appropriations, and Judiciary committees all occupy high places, and are controlled by the leaders of the dominant party.

271. Senate Regulations. — The semi-permanent character of the Senate is observable in everything it does. The rules are not changed with each Congress, as is the case in the House. Leadership belongs to the older members, who have claims to the first positions on committees because of length of service in the Senate. When a list of committeemen is made up, all the members of the party in control are placed above their opponents. The one who has been on the committee longest is chairman, and the new member comes last of his party and just before the leader of the opposition. The members of the party out of power are arranged in the same way. Then if the chairman resigns for any reason, the senator in second place becomes chairman, so that the states which change their senators least have a number of important chairmen out of all proportion to their representation in the upper house, and still more disproportionate to their population. But the method makes possible a continuity of policy, which is of the highest value in legislation and administration, and which is one of the principal sources of the Senate's power.

Conservatism in organization.

McConachie, 343–345.

Cf. Bryce, 83–93.

Cf. Wilson, *Cong. Gov't*, IV.

Another evidence of conservatism is in the lack of strictures on debate. Most parliamentary bodies have some means of setting a limit on discussion. This is usually in the form of the *clôture*, or previous question, by which the body can prevent unnecessary talk and obtain a vote on the pending bill. The Senate relies on its natural dignity to keep the debate within reasonable bounds. But this reliance is often misplaced, as the minority frequently postpone measures for no other reason than to obstruct business. This "filibustering," as it is called, has proved a serious evil in the Senate, and may, in time, make the adoption of the previous question a necessity.

Conservatism in procedure.

272. Power in Appointment. — During the fifty years that followed the Declaration of Independence the upper houses of the state legislatures had quite as much power as the governors in appointment. This distrust of the executive was apparent in the constitutional convention of 1787. A great many wished to leave the selection of all officials, including the President, to the Senate. As a compromise, the power of appointment was given to the executive department with ratification by the Senate, unless Congress agreed that it was not necessary for minor offices.

Distrust of the executive (1787).

The value of this check upon the President has been seriously questioned. Certain it is that the Senate has greatly augmented its own influence by judicious use of the veto upon appointments. The President is now allowed to select his own advisers without fear of interference from the Senate; but in the great majority of cases he must consult with the senator from the state for which the person is chosen, and must follow his advice if he does not wish to have the appointment "held up." The executive is a little more independent than it was after the impeachment of Johnson and before the quarrel between Garfield and Conkling (1881), but it is still far from free.

"Senatorial courtesy."

Bryce, 44–46, 80–84.

Eaton, D. B., in Lalor, I, 580–582.

273. Treaties. — The Constitution requires the approval of two-thirds of the Senate for the ratification of all treaties. In the convention the power to make treaties was at first

The Senate and treaties.

Bryce, 78–80.

Schuyler, *Amer. Diplomacy*, 20–24.

given solely to the Senate, and only after considerable debate did they consent to leave it to the President, with two-thirds of the senators present. On account of the difficulty in getting a two-thirds majority, the President finds it necessary to consult the Senate concerning any treaty being negotiated. To take all of the members into his confidence would be to sacrifice our foreign interests, as diplomacy is a subject for which a popular assembly has every possible disqualification. He, accordingly, feels the pulse of the Senate through the Committee on Foreign Relations, composed of men thoroughly familiar with the feelings of their associates and with the foreign policy of the past. In this way provisions that are sure to be rejected are not even considered by the executive, and the treaty is much more likely to be accepted.

Real power in treaty-making.

The Senate is very far from being the tool of the executive in our relation with other nations. It reserves to itself, and uses the right of amending or rejecting any article of a treaty, or even of inserting a new one. Such an altered treaty must be accepted by the President and the representative of the foreign power before it becomes law. If the Senate rejects the treaty entirely, of course negotiations are broken off.

Purpose of impeachment.

Bryce, 34–35.

274. **Method of Impeachment.** — In English history the representatives of the people were able to control the agents of the King solely through the power of impeachment. Like other English customs, that of impeachment was adopted in a modified form by the colonial assemblies because they needed a check upon the executive and the judiciary. When arrangements were made for the impeachment of officers of the United States in our national Constitution, it was fondly hoped that this would assure the best service because of the constant surveillance of Congress. When we realize that but eight persons have been impeached since 1789, with only two convictions, it is impossible to believe that the wishes of the "Fathers" have been fulfilled.

Impeachment is made by the House of Representatives,

and can be for "treason, bribery, or other high crimes and misdemeanors." The House states the charges, and the person accused is tried before the Senate sitting as a court. Evidence is taken and the trial conducted as in any criminal court of justice. The vote upon the charges is taken by calling the ayes and nays, and a two-thirds majority is necessary for conviction. If the person is declared guilty, he is removed from office, and may be disqualified from holding any other office under the United States. He may then be tried in an ordinary court for any crime defined in the law.

Process of impeachment.

Hinsdale, §§ 302–311.

Hart, *Actual Gov't*, § 139.

All persons connected with the United States government, except members of Congress, may be impeached. When a President is tried, the chief justice of the Supreme Court presides over the Senate, as the Vice-president could not be indifferent to a verdict that might raise him to the highest office in the land.

Who may be impeached.

The two convicted persons were district judges of the United States: Pickering, judge for New Hampshire (1804), charged with drunkenness and profanity, and Humphreys, judge for Tennessee (1862), for disloyalty. Five others have been tried on impeachment: Chase, justice of the Supreme Court (1805), Peck, district judge for Missouri (1830), Johnson, President of the United States (1868), and Swayne, District Judge for Florida (1906), all of whom were acquitted. In 1897 Senator Blount of Tennessee was impeached by the House, but the Senate decided by a vote 15 to 11 that Congressmen were not "civil officers of the United States."

Officials convicted.

275. Other Special Powers. — The Senate is called upon to elect a Vice-president whenever the electors fail to do so. The choice is limited to the two persons receiving the greatest number of electoral votes. At least two-thirds of the senators must be present, and the person selected must have a majority of all the senators, whether present or not. Only once in our history (1837) has it been necessary for the Senate to ballot for Vice-president.

Election of a Vice-president.

Except in relation to just one subject, the Senate has the same powers of legislation as the House. "All bills for

Financial powers.

Cf. §§ 292–296.

raising revenue shall originate in the House of Representatives, but the Senate may propose or concur with amendments, as on other bills." As this topic will be treated fully in the next chapter, only a suggestion or two need be given here. It will be noticed that the provision deals only with bills for raising revenue, and not for those expending it. Further, while the Senate has no initiative in obtaining money, the right to amend revenue bills gives it almost as much power as the House in finance.

Difficulties in keeping two legislative houses coördinate.

Cf. Ford, *Amer. Politics*, 266–274.

276. **The Senate and the House.** — There is no important European state in which the two houses of the legislature are of equal importance. For various reasons, the lower and more popular branch has usually much greater actual influence in shaping the policy of the government. It is beyond our purpose at this point to investigate those reasons; but, assuming the fact that the European houses are unequal, we may ask whether the Senate is dominated by the House of Representatives or the reverse, and the actual position of each house.

Senate not dominated by the House.

It is certain that neither house is subordinate to the other. The chief cause of this is the separation of the executive and legislative departments. In this country the President and his advisers are not the agents of Congress, but of the people directly. If they were the agents of Congress, they could not serve both the Senate and the House, but must choose one or the other. The one that was chosen, or that could make itself the real power in making and executing law, would of course control the other. This is what has happened in England and France, and what has not happened in the United States.

Early power of the Senate.

Still, the ablest of our early statesmen expected that the Senate would be rather an aristocratic body, which would leave most of the work in legislation to the House. But from the first the Senate refused to take a subordinate place. Although it was less representative of the people, it did represent the states, and in time it became more popular in character. It claimed a share in framing

even the financial policy, and asserted its rights on other points.

Advantages of Senate over the House.

To-day the Senate is, in many ways, more powerful than the House. This is especially due to three things: first, the more permanent character of the Senate; second, its better organization; and third, the patronage it possesses through the right to confirm appointments. Those who have noticed the work in Congress for several years cannot fail to be impressed with the way in which the Senate has gained its end, although the House seemed to have every advantage. The senators have been more united. They have ignored or obstructed House measures time after time, while Senate bills have been forced through the House. In conference committees they have yielded less and obtained more than the representatives. Unfortunately, the advantages of this state of affairs have not always been apparent, largely because the control of the Senate has not belonged to any one party, but to irregulars, who have held the balance of power.

QUESTIONS AND REFERENCES

Both Houses (§§ 255–263)

a. On the veto power in theory and in practice, look up Johnston, in Lalor, III, 1064–1067; Harrison, *This Country of Ours*, 126–134; Mason, *The Veto Power*, especially chap. III.

1. Is it any longer necessary or desirable that the Senate should represent the states? Give your reasons.

2. What are the disadvantages of having so long a time elapse between the election of a Congress and its first regular session? Should the time of the election or the meeting be changed? If so, why, and in what way?

3. Trace the history of the privileges of members of Congress in English and colonial history. Are the members of your state legislature exempt in the same way?

4. Should the pay of congressmen be increased? Would it result in our obtaining better men?

5. Should legislation be made less difficult? Would it be best to abolish the pocket veto? Are advantages likely to be derived from giving one house sole power over certain classes of bills, and the other house exclusive control of others, leaving to the second house in each case the right *to veto a bill, but no power to amend it?*

In the following and in similar sets of questions the Congressional Directory (Cong. Dir.) and political almanacs (Pol. Als.), published by different newspapers, and consecutive records of recent events, such as *Current History*, will be found almost indispensable. The indexes should be used as much as possible.

i. What was the longest single session of Congress? What was the length of the last "long" session? When was the last extra session held? How many have been called in our history? (Some Pol. Als. under "Congress, Sessions of"; Manuals of the Houses.)

ii. Select some bill recently enacted. In which house was it introduced, and on what date? To what committee was it assigned? When was it brought up for discussion, and how long did this continue? What was the final vote? (Consider same points in the other house.) (Current topics in *Current History* or some other magazine.)

iii. On what important bills were there conferences at the last session? Choose some one measure. Learn, if possible, who were members of the conference committee, and notice whether they were prominent congressmen and especially interested in the bill. Was the Conference Bill more like that of the House or of the Senate? What was the difference between the original votes and the final ones? (Reference same as ii.)

Membership and Organization of the Senate (§§ 264–271)

1. Are there any features of composition, organization, or powers of the European upper houses that could profitably be used by the Senate?

2. Is the Senate inferior in dignity and in capacity to those of fifty or seventy-five years ago? Would its *personnel* be improved by a change in the mode of election? Give your reasons in full. Are there any other advantages or disadvantages of such a change? Do you favor keeping the present method of election?

3. Would it be better to abolish the Vice-presidency, to enlarge its powers, or keep it as it is? Have the objections of our history come from the faults inherent in the office or the character of the men selected?

i. How many senators were there April 30, 1789? Are you sure? What is the number now? Are there any vacancies at present? To what are they due? How are the political parties represented in the present Senate? (Cong. Dir.)

ii. Who are your senators? When do their terms close? How long have they been in the Senate? What other official positions had they held before election to the Senate? To what party or parties do they belong? Does either come from your part of the state? In which of the classes given in § 266 would you place them? (Cong. Dir.)

iii. What is the number of standing committees in the Senate now? of special committees? of joint committees? In which ones are your senators? How many chairmen belong to the minority? Notice how long the five most prominent chairmen have been senators. Are any serving their first term? (Cong. Dir.)

iv. What Vice-presidents have become Presidents? What ones have been elevated to the office by the death of the President? How long did they serve altogether as chief executives? (Pol. Als.; Johnston, *American Politics; Amer. Fed. State*, Appendix C.)

Special Powers (§§ 272–276)

a. Story, in his *Commentaries*, §§ 742–813, gives a discussion of the tribunal for and methods of impeachment; Harrison, *This Country of Ours*, 148–158, and Johnston, in Lalor, treat of the subject historically as well.

1. What are the advantages of having the Senate participate in appointments? in the making of treaties? Give the disadvantages in each case.

2. Can you suggest a satisfactory substitute for impeachment? Is it wise to give a set of persons control over officials through removal? Should the official be removed by the person or persons who appointed him or not? Give your reasons.

3. Is it ever possible now to have a President of one party and a Vice-president of another? If so, under what conditions?

i. What officials have been appointed by the President in your county? Were any of the appointments made in opposition to the wishes of your senator or representative? Does your state senate confirm the appointments of the governor?

ii. Recall four or five treaties in our history that the Senate has refused to ratify. Would our influence abroad have been greater with

the treaties than without? Was the treaty of peace (1898–1899) ratified by a party vote? Have we any treaties of alliance now? Are there any important nations with which we have no commercial treaties?

iii. Name, if possible, bills for raising customs or internal revenue over which the Senate has exerted more influence than the House.

iv. What is the smallest number of senators who at the present time can pass an ordinary bill? ratify a treaty? elect a Vice-president?

CHAPTER XII

THE HOUSE OF REPRESENTATIVES

General References

Hamilton (Madison), *The Federalist*, Nos. LII–LVI.

Meigs, *Growth of the Constitution*, 35–68.

Bryce, *American Commonwealth* (abd. ed.), 94–154. Shows how the House actually works, and criticises methods.

Story, *Commentaries*, chap. IX.

Wilson, *Congressional Government*, 58–192. Especially full on financial procedure.

McConachie, *Congressional Committees*, 37–258. Development and present powers of committees. Shows advantages of committee system.

Burgess, *Political Science and Comparative Constitutional Law*, II, 41–130. Compares legislative departments of United States, England, France, and Germany.

Follett, *Speaker of the House of Representatives*. An excellent historical and descriptive study.

Digest and Manual of the Rules and Practice of the House of Representatives. (Revised for each session.)

Number in proportion to population.

Bryce, 94–96.

277. **Theory of Membership in the House.** — The members of the House of Representatives are chosen, every second year, by those persons in the states who are allowed to vote for members of the lower house of the state legislature, the election always being held on the Tuesday after the first Monday in November of the even years. The number of representatives which any state shall have depends upon its population, and reapportionment occurs every ten years after each census; but no state, however few its inhabitants may be, is left without one representative. In

addition to the members from the states, each territory has a delegate who may speak on any bill affecting his territory, though he may not vote.

Rules for determining number.

It was suggested in the constitutional convention that the members of the lower chamber should be in proportion to the contributions made by each state for the support of the central government; but it met with little favor. Instead, the basis of representation in the House (the free population and three-fifths of all others, excluding Indians, not taxed) was also made the basis for the assessment of direct taxes. By the thirteenth amendment the three-fifths rule disappeared, as there were no longer slaves; and by the second section of the fourteenth amendment not only was this fact specifically mentioned, but if a state denied to any male inhabitant of that state who was twenty-one years of age and a citizen of the United States the right to vote, the state should have its membership in the House cut down in the same proportion. This does not cover exclusion of criminals from the suffrage, nor does it prevent the states from prescribing an educational test for voters.

Method used since 1790.

Hinsdale, §§ 270–273, 276–288.

Story, *Commentaries*, §§ 676–683 with notes.

278. **Method of Apportionment.** — One problem over which the House has had many struggles deals with the apportionment of representatives to the states. At the first, two methods were suggested: (1) that the whole population of the country should be divided by the number agreed upon for the ratio; (2) that they should divide the population of each state by the number. It is well known that a bill embodying the principles of the first method was the subject of the first presidential veto in our history. Soon after, the second method was adopted, and has been used ever since. Until 1843, however, it was customary to pay no attention to fractions, *i.e.* if the ratio was one to forty thousand, and forty thousand went into the population of a state six times with a remainder of thirty-seven thousand, the state had only six representatives. Since 1843 those states that have had a fraction over one-half have usually been given an extra member. Reapportionments demand a great deal of mathematical skill and practical knowledge to give the best results.

The following table shows the number of members, and the rate, for each census: —

Census of	Ratio	Membership
(1789)		65
1790	33,000	105
1800	33,000	141
1810	35,000	181
1820	40,000	212
1830	47,700	240
1840	70,680	223
1850	93,420	233
1860	127,381	241
1870	131,425	293
1880	151,911	325
1890	173,901	356
1900		386

States admitted between the censuses have always added to the membership.

279. Term and Qualification of Representatives. — Representatives are chosen, on the Tuesday after the first Monday of November, for a term of two years, beginning the fourth of the following March. By special permission of Congress three states are allowed to hold their elections earlier in the fall.

Date of congressional elections.

Odd as it appears to us, there was scarcely any other clause of the Constitution which encountered more vigorous opposition in New England than the one making the term two years. So accustomed had the people of that section become to annual elections, and so much did they fear that longer terms meant loss of liberty, that it required very great persuasive power to overcome the objections. No one believes now that the term is too long.

Objection to biennial elections (1788).

Members of the House must be at least twenty-five years of age, have been citizens of the United States for the seven years preceding their election, and shall be inhabitants of the states from which they were chosen. Custom requires that they shall be inhabitants of their congressional dis-

Qualifications of representatives.

Story, *Commentaries*, §§ 617–627.

tricts as well. This precludes the method often used in England and France of selecting some prominent politician who may be a resident of any part of the country. The American usage is a natural outgrowth of our ancestors' idea that there was no representation at all unless each district had one of its inhabitants to represent it. That idea was maintained against the English custom of virtual representation in pre-revolutionary times, and still possesses great vitality. It would often be possible to secure better talent by the English method; and restriction to the residents of the district may seriously injure a party in the House by excluding some prominent leader whose district has been altered with the intention and result of causing his defeat. The American custom has another disadvantage in that the representatives are apt to consider themselves the special guardians of their districts, and they may, consequently, favor a measure which would benefit their district at the expense of the country at large. On the other hand, our practice leads to the protection of local interests where no national ones are involved, it makes the participation of the people in the national government more real, and it fixes responsibility by making each representative directly accountable to this constituency. But even if the disadvantages were greater, the desire for direct representation is so interwoven with the evolution of democracy in this country that a change can come only with a considerable modification of political conditions.

The American idea of local representation.

Cf. Bryce, 143–146.

Election by general ticket.

Hinsdale, §§ 295–299.

280. **Congressional Districts.** — The states have been compelled to elect representatives from districts only since 1842. Before that year many of them voted, by general ticket of the whole state, for the number to which the state was entitled. At the present time permission must be obtained to elect "representatives-at-large," as they are called. But this is often given when a state, by a new apportionment, has one more member than formerly, in order that redistricting may be avoided. A state may even elect all of its representatives on the general ticket, when

its representation has been reduced and there has been no time to rearrange the districts.

Gerrymandering.

Congress prescribes that the districts shall be as nearly equal in population as possible, and that the territory shall be compact and contiguous. But it has not been found possible to avoid, in practice, the abuse popularly known as "gerrymandering." This consists in an attempt, on the part of a legislature in a state, to divide up the state in such a way that the dominant party controls far more than its proportion of the districts, being assured fair pluralities in each; while the party out of power is left to carry a very few districts by very large majorities, if it is fortunate enough to elect any of its candidates.

Unfair representation.

Commons, *Prop. Representation* 59–62.

Cf. §§ 526–527.

281. Proportional Representation. — We hear quite a little nowadays about proportional representation, and a great many plans have been suggested by which minorities shall be represented. It certainly seems unfair, *e.g.* that in California the Republicans, with 139,382 votes, should have six representatives, and the Fusionists, with 128,106, should have but one; or, as in Missouri, the Democrats, with 286,019 votes, should get twelve out of the fifteen congressmen, while the Republicans, with 255,795, have only three.

The Illinois plan.

Commons, 93–96.

One of the proposed solutions of these inequalities has been tried in Illinois for over a quarter of a century in the election of members of the lower house of the legislature. Each senatorial district is given the right to elect three assemblymen. Every elector in the district has the right to cast three votes, for three different persons, or all for one, or any way he may choose. By this method an average minority can, by concentrating its vote on one candidate, be sure of one representative.

Method used in disputed elections.

Hinsdale, §§ 312–313.

282. Contested Elections. — The Constitution makes the House the judge of the elections, returns, and qualifications of its own members. At times these rights have been exercised with more zeal than fairness in excluding or unseating members of the minority. But, on the whole,

Spofford, A. R., in Lalor, III, 82–83.

the powers have been used in a judicial spirit. In a contest the person who holds the certificate of election from the governor of the state is entitled to the seat while the case is being tried. The contestant brings forward his evidence of irregularities, and all documents relating to the subject are submitted to a Committee on Elections. On report of the committee the House decides who is entitled to the seat.

Grounds for exclusion.

Persons may be excluded because they fail of the constitutional requirements. Or they may be prevented from taking part in the organization of the House on other grounds. This happened frequently during the reconstruction period, when men were excluded for political reasons. The dangers of abusing a power of this kind, where the qualifications of members are not predetermined, have been so serious that the House has always hesitated to use its power except under very great provocation.

Vacancies.

Whenever a vacancy occurs for any reason, the state executive is empowered by the Constitution to call a special election for the purpose of filling it.

Organization at beginning of a Congress.

283. **Organization and Work of the House.** — When a Congress meets for the first time, the House proceeds as soon as possible to adopt a new set of rules, following, of course, to a large extent, those formerly in use. The House begins at once to organize the machinery by which business is done. The two most prominent parts of this organization are the speaker and the committees. The speaker is the party leader of the majority, and is selected by the caucus before Congress meets. He appoints the committees at an early date.

Necessity for an efficient organization.

Reinsch (ed.), *Readings on Am. Fed. Gov't*, 223–257.

The need of a very complete organization for doing business must be evident from the amount of work brought before each house. So long as it is expected that the 386 members come together to make laws, and not merely to revise and approve laws submitted to them, they will accomplish nothing unless the machinery is well adapted to its task. As discussion by the whole House of the thousands

of bills introduced at each session is impossible, investigation must take place in committees, to which particular duties are assigned. If a committee does not separate the important from the unimportant, its investigation will be of no value, because the House cannot then attend to all the bills reported to it. After a committee has brought up an important measure, as there are a good many of these altogether, it is necessary that the bill be given prompt consideration, so that it shall not delay something else. The House plans to give the speaker power enough so that unnecessary obstruction shall not occur, and provides that debate shall cease, any time the majority wish it, by moving the "previous question." One thing more is necessary. The House must discriminate between the bills reported to it, just as the committees must discriminate between those referred to them. This may seem comparatively simple, but it is the exact opposite. Over ten years ago the House gave up the attempt to settle the matter for itself, and gave to the Committee on Rules the right to arrange the order of business, subject to the approval of the chamber.

Growth of business since 1790.

The growth of the business of the House shows why early Congresses could spare more time in debate, and why the present House of Representatives uses such different methods. In Washington's first administration but 196 bills were passed in two Congresses. As late as the thirty-seventh Congress only a little over a thousand bills and resolutions were introduced in the House and Senate. In a single session of the fifty-first Congress the house introduced 12,402 bills and joint resolutions, the Senate, 4570, a total of 16,972. Of course, most of these failed. Out of 14,584 proposed to the fifty-fourth Congress, only 948 were passed by both houses, though the proportion was unusually small.

Reed, in *N. A. R.*, 164, (1897), 641–645.

Composition and power.

284. The Committee on Rules. — This committee is now composed of ten leaders of the House, the majority of whom are from the party that controls that body. In one sense the committee is a kind of directive body which selects the subjects that the House shall consider not by

Follett, *Speaker of the H. of R.*, 274–280.

McConachie, *Cong. Committees*, 191–207.

preparing and introducing bills, as is done by the English cabinet, but by dictating what bills reported by regular committees shall receive consideration. As we have seen, its power grew out of the need of having a head for the House, to do the planning and arranging for it. If this task had not been given to the Committee on Rules, it would have been assigned to some other body, which might have absorbed the power now exercised by the rules, as well as those which at present belong to the speaker, which will be enumerated presently.

Ways in which the Committee on Rules may use its power.

McConachie, in his instructive book on *Congressional Committees*, shows clearly the process by which the Committee on Rules came to be what it is. On its composition and powers he says (pp. 200–205): "The Committee on Rules consists of five wise and experienced leaders. They represent in the House a solution of vexed problems similar to that which some of our great cities have been adopting; that is, the concentration of power in a few hands, so that clear responsibility may be fixed, and energetic, able administration secured."

"The Committee on Rules is in a position to exercise the lion's share of the veto power which decides what legislative proposal shall be rejected. Therein lies the chief element of its strength. If it determines to pigeon-hole a bill upon the calendar, it needs only to maintain silence, or engage or cajole the House with other measures. If a proposition to which it is hostile is on the eve of being brought upon the floor by another committee, it may exercise its superior privilege to claim attention for different business. If the filibuster is abroad, and it is in sympathy with him, it may, as the only authority which can check his career by a special order, simply neglect to exercise its functions."

"But to observe, on the other hand, the positive side of its power: The pettiest claim on the private calendar might find, through its favor, precedence over the greatest appropriation bill; with its aid a despised Committee on Expenditures could push aside the venerable [Committee on] Ways and Means. 'It can prepare a bill in the Speaker's room,' declares a Representative, 'and say to the committee which would ordinarily have charge of the subject: "take this or nothing."' Among the more powerful committees of coördinate privilege, that one prevails which gets the alliance of the [Committee on] Rules. While the ability of the other committees to effect changes in the [Committee on] Rules is small, its opportunities for stripping away their powers and otherwise weakening them is large, as for example by increasing their size until they are unwieldy. If the minority begins old-time filibustering tactics

against a bill, three men of the [Committee on] Rules may at once write out a brief resolution which claims the floor even against a conference report or the reading of the journal, which demands a vote without one delaying word or motion, which fixes for the opposed measure a time of debate, however brief, and an opportunity of amendment, however limited, before it is put upon its final passage. It is not, therefore, a matter of surprise that the House, in the earlier days of the Fifty-fourth Congress, passed two important measures, the tariff bill and the bond bill, with a rapidity unparalleled, probably, in all its previous history."

Three sources of power.

Bryce, 104–107.

Follett, *Speaker of the H. of R.*, chap. XI.

285. The Power of the Speaker. — The Speaker of the House of Representatives is probably more powerful than any other person connected with our system of governments, with the sole exception of the President of the United States. Even his present powers give him a position almost of dictator. The sources of this power are chiefly three: (1) He appoints all of the committees and selects the chairmen.[1] (2) He assigns to the committees the bills that the House wishes to commit. (3) The speaker recognizes whom he pleases. The House does not use the custom that the first person to address the speaker shall have the floor. There may be a dozen asking for the privilege of speaking or of making a motion, but only the one whom the speaker recognizes has the right to address the House. The speaker can in this way favor certain legislation and obstruct bills to which he is opposed without the help of the Committee on Rules. It is now a rule of the House that persons who are present and not voting may be counted to make a quorum. Before this rule was adopted it was possible for a minority simply by refraining from voting to interfere with the conduct of business very effectually.

The Speaker and Committee on Rules.

Before 1910 the speaker was also chairman and most important member of the Committee on Rules, but this position was taken from him by members who feared the further concentration of the speaker's power.

[1] In the sixty-second Congress the power to select committees was granted to the committee on Ways and Means.

Growth necessary and will continue.

Hart, *Essays on Gov't.*, I.

Follett, *Speaker of the H. of R.* chap. III.

286. Growth of the Speaker's Power. — The speaker was originally, like his English prototype, a mere moderator, whose duty was to preside impartially over the deliberations of the House. But before the first Congress finally adjourned he had been given the right to appoint committees. By degrees he became more and more closely identified with his party, and less effort was made to give the minority an equal share in the work of even minor committees. The increase of business made necessary the exercise of greater power by the speaker on the floor of the House. At length it was found advisable, in the eighties, to give him and his colleagues on the Committee on Rules the right to arrange the order of business beforehand. As the speaker dominates this committee, and as the committee controls most of the business of the House not in the hands of the speaker, we have an illustration of one man power seemingly at variance with our whole theory of popular government. This concentration of power shows that political bodies need effective organization, even when they are as small as the House of Representatives; and that if no suitable organization is provided, one will be developed such as the situation demands. The lower branch of Congress is not a permanent body in any sense, for usually the majority of its members are serving their first term. Consequently, leaders are more necessary, and must be given more power than would be the case were the term of representatives longer or reëlection more common. We cannot expect soon to see this concentration of power cease. It will probably increase, yet there is no real danger to good government in these changes, for it is better to give a few persons a great deal of power, making them correspondingly responsible, than to have that power so distributed among many that little is accomplished, and yet we cannot tell whom to blame for what goes wrong, or whom to reward for faithful service. So long as the speaker's term is short, and he is directly responsible to the House and indirectly to the people, we need have little fear that his power will prove a menace to liberty.

Development.

McConachie, *Cong. Committees*, 349–358 (table).

287. The Committees. — The first standing committees were selected by lot in 1789. In all of the colonies and early state legislatures, and in the continental Congress, committees had been used for the transaction of business; and they were found indispensable in the House. In 1790 their appointment was given to the speaker. By 1816, the year in which the Senate began using standing committees, there were twenty in the House; by 1865 there were forty; and in 1910 the standing committees numbered sixty-one.

The majority in each case belong to the same political party as the speaker, so that the minority have nothing to say in committee work relative to partisan questions. The committees are composed of an odd number of persons, varying from three members on the Committee on Printing to seventeen on several others. The favorite number is thirteen. The more important ones have rooms assigned them, and hold meetings at certain hours on specified mornings. It is in these busy committee meetings that most of the real business of the House is transacted. During these sessions of the committees they are in conference with officials belonging to some department of the administration, whose work deals with the same subject as the committee. Here the committee listens to persons who are interested in the bill under discussion, examines witnesses, and makes a complete investigation, accompanied by full expression of opinion by the leaders of the committee. The meetings are often secret, but frequently open to those who have business relations with the committee.

Composition and methods.

Bryce, 115–119.

Spofford, A. R., in Lalor, III, 78–79.

288. Criticisms of the Committee System. — Our committee system of government has called forth unfavorable comment from able and fair-minded writers, who have devoted a great deal of time to the study of American political methods. The most prominent of these is Mr. Bryce, who mentions several objections to the committee system, as follows: "It destroys the unity of the House as a legislative body." "It prevents the capacity of the best members from being brought to bear upon any one piece of legislation, however important." "It cramps debate." "It lessens the cohesion and harmony of legislation." "It gives facilities for the exercise of underhand, and even corrupt influence." "It reduces responsibility." "It lowers the interest of the nation in the proceedings of Congress," and "the country of course suffers from the want of the light and leading on public affairs which debates in Congress ought to supply." Each of these criticisms is briefly discussed in his *American Commonwealth* to which

Statement of criticisms.

Bryce, 119–122, 126–129.

Wilson, *Cong. Gov't.* 70–72, 79–85, 91 *et seq.*

the student is referred for further information concerning them.

Why the defects are not dangerous.

The justice of the criticisms cannot well be questioned, severe as they appear; but the defects are not so serious as they might seem, for two reasons. (1) The committee system is an absolute necessity for a legislative body which does not restrict the right of initiation of its individual members, and confer upon some set of persons sole power to bring in important bills. The committees have been evolved as the best means of reconciling legislative freedom of congressmen with increase of business. If we were willing to concentrate most of the powers of initiation in one committee, we could undoubtedly make it more responsible than any of ours now are; but we should run a greater risk of developing class rule, which we have sought above all else to avoid, during the nineteenth century at least. (2) Most of the faults enumerated above will be avoided, if certain changes are made by which some central directive committee is given control over the others for the purpose of harmonizing legislation. The most important objections to our system are the lack of unity and the impossibility of fixing responsibility. Such a committee would be able to prevent conflicting and contradictory legislation without altering greatly present methods and processes. It could of course be responsible only to the House or to the people through the representatives, as it would have no power outside of the House.

The routine for bills.

Wilson, *Cong. Gov't.*, 64–79.

289. **The Course of a Bill.** — How is this machinery of the House used in doing business? In the first place it has nothing to do with introducing bills, for every bill is presented by some representative acting, it may be, for some committee. Members are not allowed to bring in bills whenever they please, but are restricted to particular days. The bill is taken to the clerk beforehand, and when the roll by states is called, at the proper time, the clerk reads not the bill, but the title. It is then sent to the proper committee, without delay if but one committee asks

for it. When the bill is of such a nature that it might be referred to either of two committees, and of such importance that both committees want it, delay may be occasioned by the strife of the chairmen for the bill. Most of the measures thus committed are never heard of again, are "killed in committee"; but many of them are reported, favorably or unfavorably, to the House. They must then go through second readings, unless they have already done so, and a few, after debate and possibly amendment, are brought to a vote.

Allotment of time in the House.

Reed, in *N. A. R.*, 164 (1897), 646.

290. The Transaction of Business. — The House has its time well divided up by rule and custom. The first and third Mondays are set aside for the introduction of bills. The other Mondays are devoted to bills relating to the District of Columbia. Friday afternoons are given to private bills, aside from pensions, which are taken up Friday evenings. The other days are devoted to public business.

The order of business.

Reed, in *N. A. R.*, 164 (1897), 646–650.

The House meets at noon, and after prayer and the reading of the Journal, the speaker recognizes the chairman of the committee who, according to the calendar, has the right to the floor. The latter has selected some bill or bills whose passage he deems essential to the proper performance of his committee's work. He has an hour to present the measure, though he does not often take as much time as that himself. He may have all of that day and of the next, provided he is not interrupted by a report from some other committee whose chairman has the right to demand immediate consideration for the bill reported. At any rate, the first chairman has the claim to parts of two days, and before his time is up he usually moves the previous question, which stops debate and makes it necessary for the House to decide whether the original motion shall be put to a vote.

Work and regulations.

291. The Committees of the Whole. — Some of the business of the House is done in what are known as the Committees of the Whole. There are two of these: one caring for private bills, and the other for public bills relating to finance. The latter is of course much the most important.

McConachie, *Cong. Committees*, 99 *et seq.*

The regulations for these committees are not the same as the rules of the House. The speaker always calls some one else to the chair, as he sometimes does in the House proper. But the presiding officer cannot make any one attend the committee, neither does he have the right to maintain order by force. The quorum, instead of being one-half the members, is only one hundred. Speech is not subject to just the same limitations as in the House, and consequently more opportunity is given for discussion. When the committee has finished the business in hand it rises and reports to the House, which is in no way bound by the action of the committee.

Exclusive power of the House.

Hinsdale, §§ 331–334.

292. The Raising of Revenue. — Among the special powers conferred upon the lower branch of Congress by the Constitution is the right to originate all bills for the raising of revenue. These bills may be amended by the Senate. In practice, measures for the raising or appropriation of money originate in the House, and the Senate alters them to suit its own plans, so that the House may fail to recognize the bill sent in by the upper house as the one passed some time before.

Relation of revenue and appropriation committees.

Bryce, 131–135.

Wilson, *Cong. Gov't*, 136, 146–163.

The determination of the amount of revenue needed to run the government, and the methods by which the money shall be raised, is the delicate task assigned the Committee on Ways and Means. It is the custom in this country to have the money raised by one committee and spent by a dozen others. Such a system does not guarantee that the sums received and expended will be the same, nor does it assure a surplus in case of a great difference between the two amounts. The best that the Committee of Ways and Means can do is to raise as much as the government seems to need. It cannot tell how extravagant the different appropriation committees may be, singly or together, as they make no attempt to work in harmony with the Ways and Means. If a deficit occurs, money must be borrowed, and perhaps the new Ways and Means will devise other ways of drawing money from the people's pockets.

Different forms of taxes used.

293. The Sources of Revenue. — It will be noticed that in national finance the committee for raising revenue must wait upon the committees who expend it. A nation is not

like an individual, whose expenditures must depend upon his revenue. It has certain governmental duties to perform, and in performing them it thinks first of carrying on its work, and second of raising the money to do it. In other words, expenditure determines the income. If the expense is unavoidable, and the revenue is not forthcoming, the government sooner or later goes to pieces; but in modern States the question is not whether the money can be obtained, but by what means. In the United States we have derived the greatest part of our revenue from duties on imports. Under Federalist rule, and since 1861, internal revenue has been very important. The public lands have yielded some, while temporary income and direct taxes have been used. Practically every cent brought into the treasury has been by indirect taxes, levied almost as much in the interest of industrial development as for the sake of revenue.

Cf. §§ 578-584.

294. **Difficulties encountered by the Committee on Ways and Means.** — All of these indirect sources are liable to great fluctuations, according to the extent of the business in the goods upon which the tax is levied. So the Committee on Ways and Means is beset by difficulties, or would be if it considered these objections worthy of that name. (1) It must raise an amount of money for the government when it does not know how much is needed. (2) Its well-planned calculations may be ruined by some unforeseen business change. (3) In the raising of its revenue from at least one source, the revenue feature is less important than the protection feature. This is true even of the bills designed during late years as free trade measures. (4) If it attempts a nice adjustment of income to appropriations, the changes introduced by the Senate, which even a conference committee cannot induce them to drop, spoil the whole scheme. So the committee does not attempt to equalize the two sides of the balance — a problem it cannot solve — but is content if it gets bills passed to meet general needs.

Defects in financial methods.

Cf. Adams, *Science of Finance*, 129–132.

Surpluses in the United States.

Fortunately for us, the United States government has always had all the money it needed in times of peace, and the Committee on Ways and Means has not had so great a burden as might at first be thought. In fact, our Congresses have had as much trouble in expending the surplus as in raising enough money. It can readily be seen that this command of a full purse has given the national government the opportunity of using its power to better advantage, and has greatly aided in the development of nationality. Had the states been able to levy their taxes as indirectly as Congress has done, they might have insisted upon a stricter construction of the Constitution. Certainly the national sphere of governmental powers would not have been the same if we had used the plan of the new Australasian constitution, which gives the federal government the exclusive right to levy indirect taxes upon imports, but compels it to distribute four-fifths of the revenue among the states of the federation.

Its distribution among many committees.

McConachie, *Cong. Com's*, 181–186.

Wilson, *Cong. Gov't*, 163–169.

295. Regulation of Expenditure. — Before 1865 the Committee on Ways and Means looked after the appropriation of funds as well as its present duties. During that year a separate appropriation committee was created. For a time it had sole charge of appropriations, but the Committee on Rivers and Harbors made good its claim to the bill granting money for rivers and harbors. Little by little the Committee on Appropriations has been deprived of its duties, till now it has thirteen associates which take charge of the appropriation of funds for particular purposes.

Process of determining the amount of appropriations.

Adams, *Science of Finance*, 123–129.

It is customary for the Secretary of the Treasury to have the chief officials in the Treasury and other departments make up in the fall of each year estimates of the amount of money needed for the year beginning the first of the following July. These estimates are bound together, and sent with the Secretary's report to Congress when it meets. These estimates are assigned to the proper committees, and are usually the bases of the committees' report, but the committees are not bound by the estimates of the executive department. When a bill making appropriations is reported to the House, that body considers it in Committee of the Whole on the state of the Union. In times past this consideration has been careful and thorough, but with the multiplication of appropriation bills the House has given less attention to the subject. It might be stated that the committees usually recommend a much smaller amount than that asked in the estimate. In the Senate the appropriation is likely to be increased, and finally, when the con-

ference committee reports, it is probably the close of the session, and the conference bill is passed without much debate on its merits.

The amount and the sources of our revenue at different periods is shown in the following table (last three figures omitted except in totals): —

Year	Customs	Internal Revenue	Public Lands	Miscellaneous	Total
1795	$5,588	$475		$28	$5,954,534
1820	15,006	106	$1,636	93	16,840,670
1850	39,669		1,860	2,064	43,592,889
1865	83,928	209,464	997	26,642	322,031,158
1887	217,287	118,823	9,254	26,034	371,403,288
1899	206,141	272,487		37,025	515,652,666

The expenditures in the same years have been as follows —

Year	Civil and Miscel. Indians	War Dept.	Navy Dept.	Pensions	Int. on Public Debt	Total
1795	$1,401	$2,481	$411	$69	$2,947	$7,309,601
1820	2,908	2,630	4,388	3,208	5,151	18,285,535
1850	17,707	9,687	7,905	1,867	3,782	40,948,383
1865	48,049	1,030,690	122,617	16,348	77,395	1,295,099,289
1887	91,459	38,561	15,141	75,029	47,742	267,932,180
1899	132,619	228,834	64,814	139,387	39,896	605,551,323

No account is taken of the receipts from the post-office or of expenditures for the same except for the excess above receipts.

296. Reform of the Financial Methods. — The financial methods used by Congress have been subjected to very severe criticism. The entire lack of coöperation between the Revenue and Appropriations Committees, the inability of the Treasury department to influence either chamber except by suggestions, which are seldom heeded, and the opportunities given at every stage in the preparation of the budget, as it is called, to make changes for which the responsibility cannot be fixed, have been attacked unmercifully. Many writers have made a comparison between the British and the American systems, showing the advantages of the former. In Parliament a single com-

Criticisms.

Bryce, 135-137.

Wilson, *Cong. Gov't* III.

mittee, the Ministry, prepares the bills for raising and for expending money. The members of the House of Commons may offer amendments to either, but in case they are adopted the Ministry aim to alter the second bill so that the two will practically balance.

Suggestions for reform.

Adams, *Science of Finance*, 168–177.

Dr. Henry C. Adams, who is recognized as second to no other authority on financial questions in the United States, offers these suggestions for improving our system: —

"First. The first step in this programme . . . consists in the establishment of a budgetary committee, which shall have full and exclusive jurisdiction over the form of the budget when presented to the legislative body for discussion and vote."

He proceeds to show how this committee may be made responsible, and why the task is not too great for one committee.

"Second. It further lies in this plan that the right of individual initiative of money bills, as also the right of indiscriminate amendment, should be taken away from the individual members of the House of Representatives, whether the House is organized as a committee of the whole or in legislative session. In this regard the practice in England would seem to meet the requirements of appropriate organization."

"Third. Better coöperation between the financial committee of Congress and the Treasury department, all communications taking place through the Secretary of the Treasury." (Adams's *Science of Finance*, pp. 172–176.)

The House as an electoral college.

297. Election of a President. — Besides the special power of the popular chamber concerning matters of finance, and the sole right of impeachment, — discussed in the previous chapter, — the House of Representatives may be called upon to elect a President. This it has done twice. When the electoral college fails to give any one candidate a majority, the House proceeds to select one from the three who stood highest on the list of the electors. The vote is then taken by states, each state having one vote.

Election of 1800.

Channing, § 211.

In the election of 1800 the electors did not designate whether the candidates voted for were nominees for the presidency or vice-presidency, they merely cast two votes. As Jefferson and Burr each had seventy-three votes, the House was obliged to select one of the two, because it was a tie. The choice fell upon Jefferson only after thirty-six ballots. The twelfth amendment was adopted in 1804, which changed the method in certain particulars, and made

it necessary for the electors to designate the office of each candidate.

Election of 1824.

In the election of 1824 there were four men who received votes in the college. Jackson had ninety-nine, Adams eighty-four, Crawford forty-one, and Clay thirty-seven. The choice was limited to the first three, and as Clay held views similar to those of Adams, by combining the votes of their followers Adams was elected by the House without difficulty. It will be easily perceived that the failure of the college to elect cannot recur under the present Constitution, unless there are more than two great parties or during the reorganization of parties.

Channing, § 264.

The House at work.

298. **Characteristics of the House.** — The meetings of the lower house are held in a large hall in the south wing of the Capitol. The desks of the members are arranged in semicircular form about that of the speaker, the Republicans on his left and the Democrats on his right. When a congressman gains the floor, he may speak from his seat or from the space before the speaker's desk. In either case he is likely to receive scant attention, as the hall is almost always so noisy that difficulty is found in hearing any but the best speakers. Unless the subject is one of considerable importance, the members are quite often in adjoining rooms, or if present are devoting their time to something else. For these reasons speaking and debate is much less prominent in the House than in the Senate, where the smaller room, and the more orderly deportment, give opportunities for speakers to present their views to advantage.

Ford, *Amer. Politics*, 252–254.

Bryce, 108–114.

Wilson, *Cong. Gov't*, II.

Publications of Congress.

According to the Constitution each house is to keep a journal of its proceedings. At present each has a journal published fortnightly, which gives a summary of measures introduced and all votes taken. The government also issues a daily report called the Congressional Record. This contains in full all speeches delivered in either chamber, as well as speeches for which there was not time or which were intended to be printed only for the use of constituents.

299. **The House and the Senate.** — On account of the more popular character of the House, we should naturally

Sources of strength and weakness in the House.

Ford, *ibid.*, 243–248.

Bryce, 138–142.

expect to find it more powerful than the Senate; but, as already stated, this is not the case. Several causes have contributed to this, but none is more potent than the difference in tenure. The chief element of the Senate's strength lies in its permanence. The retiring of but one-third of the members at one time, and the conservatism of the upper branch, have developed an organization apparently less perfect than that of the House, in reality much more efficient. The House has sought to hold its own by great centralization of power in the hands of its leaders; but this concentration hardly offsets the disadvantages produced by short terms and a constantly changing membership.

A still more centralized organization probable.

300. The Future Organization of the House. — It may be that in time the organization of the House will be still further centralized so that it can then dominate the Senate. If it were the custom to reëlect representatives in most cases, this would probably be done in the near future, but such a change is not probable. It seems more likely to come through the Committee on Rules. That committee has at present a great deal of power, much of it of a most arbitrary character, but its control is purely negative. No person and no committee is responsible to it. In turn, it is not directly responsible to the House. The suggestion has been made that something similar to the British Ministry might be used in the House. If the speaker and the Committee on Rules were chosen not for a fixed period of two years, but were to continue in office only so long as they had the confidence of the House, responsibility would be much more definitely fixed. If the committees were appointed as at present, and subject to the oversight and control of the Committee on Rules so that they worked in harmony with the latter, most of the advantages of the committee system would be retained without the great defect of a headless organization. The individual member would of course be obliged to give up some privileges for the sake of the whole body. But the House would be less like an army in which each corps works, to a large degree, independent of every other; and each regiment has, as far as possible, a plan of its own which it seeks to execute.

QUESTIONS AND REFERENCES

Composition (§§ 277–282)

a. Early apportionments of representatives are considered by Williams, in Lalor, I, 102–111; Story, in his *Commentaries*, §§ 676–683, especially notes; James, E. J., in *A. A. A.*, IX (1897), 1–41.

1. Give the advantages and disadvantages of increasing the term of office for representatives. Would it be better on the whole for us to adopt the English custom of paying no attention to residence of representatives? Explain your answer.

2. Can the abuse of gerrymandering be avoided by proportional representation? What would be the effect of proportional representation on the district system?

3. Would it be advisable to confer upon the courts the right to decide disputed elections? Give arguments on both sides. Should the committees have more power in collecting evidence?

i. How many congressional districts are there in your state? In which one do you live? What counties (if more than one) are comprised in it? How does it compare in area and population with the others of the state? (Cong. Dir., some Pol. Als., State Blue Book.)

ii. Who is your representative at present? How many terms has he been in Congress? On what committees does he serve? For what bills has he been directly responsible? Compare the vote at the last election with those of previous ones. (Last Cong. Dir. and Pol. Als.)

iii. When do disputed elections become especially important? How many seats were contested at the beginning of the last session? Were the members of the dominant party seated in every case?

Organization and Work (§§ 283–291)

a. Make a study of the lower houses in France, Germany, and England based upon Wilson's *The State*, §§ 402–405 (Fr.), §§ 516–529 (Ger.), §§ 890–909 (Eng.); and Burgess's *Comparative Constitutional Law*, Vol. II, Div. II, chap. II (Eng.), chap. III (Ger.), chap. IV (Fr.), chap. V (comparative study of all).

1. Can you suggest any system that can be or could have been substituted for that of the committees? Are the defects of our system inherent in it? are they unavoidable because of our political ideals and methods, or may they be remedied? (Read references above, if possible, before answering.)

2. What means have the House and the people of making the Committee on Rules and the speaker responsible? Is or is not an increase of their authority dangerous, and why? Would it be best to give the Committee on Rules the same right as the English ministry to introduce measures? How can we best remedy the two serious defects of our system, viz., lack of unity and lack of power to fix and enforce responsibility, with or without changing the committee system?

3. Give reasons why private bills should be left as much as possible to the committees. Does the House devote too great a proportion of its time to these bills?

i. Name in order the six committees you consider most important. Who is chairman of each? What members from your state are on any of them, and which ones? Do any of the committees appear to be sectional in their composition?

ii. Who is the speaker of the House? From what state does he come? Who were his rivals for the speakership? Has any section had more than its share of speakers since 1860? (See Appendix C.)

iii. Mention at least three instances of public bills passed by the last Congress. Give four classes of private bills. Mention recent cases of filibustering in Senate or House.

iv. To what committees would the following bills naturally be assigned (in case it might be appropriately given to more than one, name all): Nicaragua Canal bill; bill appropriating $50,000 for a public building; a pension bill; bill enlarging powers of the Interstate Commerce Commission; amendment to the Constitution; bankruptcy bill; tariff bill for Philippine Islands; bill providing for resurvey of public lands, for deepening the channel of the Mississippi, granting land to a transcontinental railroad, arranging for the purchase of armor plate, and revising the law of copyright.

Special Powers (§§ 292–300)

1. Can we ever make any person or set of persons absolutely responsible for money bills under our present system and with present conditions? Explain. Do we have sufficient guarantee that the money will be well spent?

2. What would be the advantages of giving the executive departments more influence over the financial operations of Congress? the disadvantages?

3. Why was the election of a President, in case the college failed to select some one, left to the House of Representatives? Why was the vote to be taken as it is? Have the persons chosen commanded any less confidence on account of the method of choice?

i. Consult the tables in § 295. What is the principal source of revenue at the present time? Which one can be increased most easily? To what extent has direct taxation been used?

ii. What item of expenditures has been greatest, taking our history as a whole? Which items are increasing? which ones decreasing? Should any be curtailed, and if so, which?

iii. What is the amount of the public debt? Of what parts is it composed? What was the size of the debt in 1835? in 1867? in 1890? Is it increasing or diminishing now? Why is it thought that a public debt is a good thing and continued surpluses are injurious to a government? (Pol. Als.)

iv. In what year were the representatives chosen who elected Jefferson? Who voted for Adams? Look up in Johnston's *American Politics* the composition of the houses in session in February, 1801, and February, 1825, and compare each with that of the houses elected in November, 1800, and in November, 1824. Is any principle of democratic government violated?

CHAPTER XIII

THE POWERS OF CONGRESS

General References

Hinsdale, *The American Government*, 194–235.
Townsend, *Civil Government*, 157–207.
Schouler, *Constitutional Studies*, 115–147.
Cooley, *Constitutional Law*, 53–102.
Burgess, *Political Science and Comparative Constitutional Law*, II, 133–167. Discusses general principles. Authoritative.
Meigs, *Evolution of the Constitution*, 122–159, 261–272.
Boutwell, *The Constitution at the End of a Century*. Summary of some important decisions.
The *Federalist*, Nos. XXIII–XLIII.
Story, *Commentaries*, chaps. XIV–XXXI. The most complete exposition of the law of the subject.

Aim of the chapter.

301. General Powers. — All the legislative power granted in the Constitution to the United States government is vested in Congress. The different classes of these powers have been mentioned in two places, but they deserve a fuller treatment. It is the aim of this chapter to discuss some features of the most important powers which are not considered at some length under other heads, and to note some of the means used by Congress in performing its constitutional duties.

Extent of the power conferred.

Hinsdale, §§ 341–347.

Cooley, *Const'l Law*, 53–63.

302. Taxation. — Article I, Section 8, of the Constitution opens in this way: "The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States." As is well known, the Confederation failed par-

tially because of lack of funds, its sources for revenue being (1) requisitions upon the states, (2) borrowing money, or (3) creation of paper money. There was no one thing upon which the convention was more unanimous than that the central government should have independent power of taxation. The right to levy "taxes, duties, imposts, and excises" was therefore granted, subject to the restrictions that all direct taxes should be in proportion to population, and that the others should be uniform throughout the country. But it was thought best to state the objects to which this revenue was to be devoted. Fortunately, the term *general welfare* was inserted, which has made it possible for Congress to expend this money for any object over which the national government has constitutional control. The extent to which these different kinds of taxes have been used is taken up in the chapter on Taxation.

United States bonds.

Hinsdale, §§ 348–356.

303. **Borrowing Money.** — The Constitution directly confers the power to borrow money on the credit of the United States. This is done in several ways. Usually the national government issues bonds, which it sells upon the market to the highest bidders. The rate of interest that is offered, and the premium or discount at which the bonds are taken, depend upon the credit of the government at the time rather than upon the amount of the existing debt. During all of our wars, and occasionally in times of peace, the government has found it necessary to sell bonds. The largest amount ever issued at one time was in 1862, when the par value of the bonds was $500,000,000, although the next year Congress authorized $900,000,000; but this second law was soon after altered. Most of the bonds of the Civil War were for six per cent, and sold at or near par. During the Spanish-American War, when the government offered $200,000,000 worth of three per cent bonds for sale, more than six times as much was subscribed, most of it at a premium. In view of these facts comment on the improved credit of the United States is unnecessary. At the present time the Secretary of the Treasury may sell three per cent

bonds without special action of Congress. This enables him to meet any special crisis, even if Congress is not in session.

United States notes.

Boutwell, *Const. at End of Century*, 182–190.

The United States may also borrow money by means of what is called notes. These are issued either for a short time or else for an indefinite period, and may or may not bear interest. In some cases, as with the "greenbacks," they have been made legal tender in the payment of debts.

Power of Congress in regard to money.

The national government has full charge of all matters relating to coins, coinage, and the prevention of counterfeiting; and the states are not permitted to issue bills of credit nor make anything but gold and silver coin a tender in payment of debts.

Legislature *v.* the executive.

Cf. Meigs, *Growth of Const.*, 146–150.

Hinsdale, §§ 400–408.

Cooley, *Const'l Law*, 88–92.

304. **Military Power: the Army.** — The constitutional history of the English-speaking race is, to a large extent, a record of the struggle between the monarch and the representatives of the people to see which should have charge of all financial and military affairs. In this country at the present time the executive has nothing to say about the purse except in a negative way. But he still retains the monarch's position as military leader, though Congress has a great many checks upon him. It alone can declare war, raise and support an army, and create a navy, and make rules for the regulation of the land and naval forces, which the President is to execute; but even if it wishes, it cannot vote money for an army for a longer time than two years. Congress also provides for organizing and calling forth the militia "to execute the laws of the Union, suppress insurrections, and repel invasions." The American people have always shown so great a distrust of a standing army that Congress has never authorized a force larger than was necessary to keep the Indians in order. This freedom from the militarism which binds Europe has been of inestimable advantage, because it has left half a million of our ablest-bodied citizens at liberty to enter the ranks of producers instead of living upon the income of others. Before 1898 the maximum of enlisted men permitted by law was

Advantage of a small army.

25,000, but the law of 1901 placed the maximum at 100,000, with a minimum of 57,000.

Rules for organization and in service.

305. The Militia. — A great many believe that proper preparation for possible wars can be obtained without serious loss to our industrial life through a well-trained militia. At the present time, there are only a little over a hundred thousand men enrolled in this branch of the service, although theoretically the militia includes all able-bodied citizens between the ages of eighteen and forty-five who are not exempt by national or state law. Each militiaman enrolled for service is pledged for three years, during which he receives arms and accoutrements free. He may be called out by the state executive or by the President, for any time not exceeding nine months, to repel invasions or put down insurrection. He is not compelled to fight on foreign soil, but is otherwise under the same regulations as the regular soldier when called upon to perform duty by the national government.

Contrast between our militia and foreign reserves.

The general rules for the militia are passed by Congress, and provide for the method of organization, number of officers, method of election, and other details. Such matters as are not considered by Congress are cared for by each state as it sees fit. The difference between the national guard and the *Landwehr* or other reserves in foreign countries should be carefully noted. Our militia is not a trained body in the same sense as these others, for it is not composed of members of the standing army who have given the required number of years to their country, and are kept organized so as to be called on in case of need. Such a force is necessarily more efficient than a militia is likely to become.

Value of a navy.

306. The Navy. — Most of those who have given the subject special study advocate a large navy as the best means of protecting ourselves from foreign enemies in time of war, and as a means of preventing war altogether. Since 1883 the United States government has done a great deal toward building up a navy, but in 1910 we ranked third among the nations in the number of formidable vessels. Need of defending our colonies, as well as the

Panama canal and our own extensive coast line has induced Congress to make large appropriations, but Great Britain and Germany have been even more interested in securing a fleet of Dreadnaughts.

Different means for defence.

Ayres, J. C., *Forum*, XXIV (1898), 416–421.

307. Coast Defence. — Congress has made every effort to adequately protect our seaports by coast defences of different kinds. The most important of these are the coast-defence vessels, usually heavy-armored monitors or floating batteries; and the land batteries, composed of large mortars and very powerful guns, often mounted on disappearing carriages. The channels are well guarded by torpedoes or submarine mines controlled by electricity from the nearest fort or battery. Only upon the Great Lakes is the defence quite incomplete. By treaty with Great Britain we have agreed not to keep more than one war vessel, and not to fortify any harbors.

Views regarding the extent of Congress's territorial powers.

Judson, H. P., in *R. of R.* XIX (1899), 67–75.

308. Territorial Powers. — The national government has power to acquire, cede, and control territory. The Constitution does not directly delegate the first of these, but no right is now more firmly established than that of annexing territory. For this public domain Congress may make "all needful rules and regulations." Over it the power of Congress is very great, the Supreme Court having decided, in the "Insular cases" of 1901 and 1904, that Congress may levy special tariffs on the colonies, since they are not integral parts of the "United States," and that Congress shall decide when the Constitution shall apply to territory that we acquire.

Partial self-government and preparation for statehood.

Hinsdale, §§ 589–597.

Cooley, *Const'l Law*, 170–172.

309. Principles of Territorial Control. — The development of national power has gone hand in hand with our territorial growth. Attention has already been called to the causes which influenced the states that had Western land claims under the Confederation to yield control of this Western domain to the United States in Congress assembled. These cessions began as early as 1780, and were not completed till 1802. In the famous Ordinance of 1787 for the territory northwest of the Ohio River, Congress pro-

ceeded to lay down two principles that have been pretty faithfully adhered to in all later acquisitions: (1) The territory is governed by Congress, but as the population increases the people are given a larger share in the government; (2) preparation is made for the admission of states as soon as the population is sufficient and upon an apparent equality with the other states.

Territorial growth (1803–1898).

Hinsdale, §§ 584–588.

310. **Acquisition of Territory.** — Since 1787 we have rarely failed to embrace any opportunity to enlarge our boundaries. The first addition was made in 1803, and consisted of nearly a million square miles called Louisiana, covering all of the western Mississippi basin and the isle of Orleans. In 1819 Florida was purchased from Spain, and we gained a natural boundary on the southeast. In 1845 we annexed, by joint resolution of Congress, the independent state of Texas, with extensive but indefinite boundaries on the west. The next year a treaty with Great Britain recognized our right to the Oregon country west of the Rockies and south of the forty-ninth parallel. At the close of the war with Mexico (1848) a large section of territory south of Oregon and west of Texas was annexed, and (1853) a disputed strip in what is now the southern part of Arizona was added, the sum of $25,000,000 being given Mexico as compensation for this immense region. In 1867 Alaska was purchased from Russia for $7,200,000. Not until 1898 were any further changes made. In July of that year Hawaii was annexed by joint resolution, and later, by the treaty with Spain, Porto Rico and other islands were ceded, and the Philippines were transferred, $20,000,000 being paid for Spanish property.

Organized and unorganized territories.

Cf. § 628.

311. **The Government of a Territory.** — This domain has usually been divided into districts of a convenient size called territories. These territories are governed according to the law that may be prescribed by Congress, and are of two classes, organized and unorganized, the former always having a large degree of self-government, the latter being governed from Washington.

Degree of self-government in the organized territories.

Bryce, 389–400.

Cooley, *Const'l Law*, 172, 173.

In what we may call the territorial, as distinguished from the colonial government, we have a combination of self-government with control by the United States. The legislature of two houses is chosen by the people for a term of two years, and its sessions are biennial. The legislature has almost as full power as the legislatures of the states, subject of course to the negative of Congress. Each territory chooses a delegate, who sits in the House of Representatives and may speak on bills affecting the territory, though he has no vote. The people also elect all judges, except the very highest, and all local officials.

Degree of national control.

Yet national control is quite prominent even in a "self-governing" territory. The President appoints, by and with the advice of the Senate, the governor, the secretary, the three judges of the highest court, the district attorney, and the marshal, all of whom hold office for four years. The number of members of the legislature and the qualifications of voters are determined, not by territorial, but by congressional law. The governor has general executive power, is head of the militia, and has power to pardon offences against territorial law. He has, in addition, a two-thirds veto over the legislature. Congress may at any time change the government of a territory, and it at all times reserves the right to annul a law of the legislature.

Government of Washington, past and present.

Meriweather, C., in *P. S. Q.* XII (1897), 409–419.

312. **The District of Columbia** is governed by Congress as it sees fit. Until 1870 the city of Washington was allowed a regular municipal government. Then for some years it was governed more directly by Congress; but since 1878 control has been exercised through three commissioners appointed by the United States legislature, with pretty complete power to appoint, and to make ordinances.

Process of admission.

Cooley, *Const'l Law*, 175–183.

313. **Admission of New States.** — These territories may be admitted to full statehood by Congress at its discretion. It often happens that the territory which desires admission calls a constitutional convention so as to adopt and ratify a constitution before applying. If its request meets with favor, it is then admitted at once. More frequently Con-

gress passes an "enabling act," which designates the boundaries of the new state, names the qualifications of voters who shall elect a convention for the purpose of framing a constitution. It may go further and specify certain conditions that must first be fulfilled, such as provisions for public schools and renunciation of all claims to public lands. If the constitution accepted by the people is satisfactory to Congress, and if that body believes the conditions have been met, the territory is declared to be a state of the Union.

Constitutional provisions.

Story, *Commentaries.*

314. **Limitations on Admission of New States.** — In the admission of new states the Constitution prescribes certain limits beyond which Congress shall not go. When the Constitution was formed there was very great dread among the states that Congress might interfere with them, so the express provision was inserted that "no state shall be formed or erected within the jurisdiction of any other state, nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the Congress." The only time that these clauses have been in any way violated was in the admission of West Virginia, in 1863. The state of Virginia was in rebellion, but the western counties remained loyal. A new constitution was adopted ostensibly by the whole state, really by this one section. Its senators and representatives were recognized by Congress, and the name West Virginia given to the state. After the war the Virginia legislature gave its consent to the change.

Conditions for legal interference.

Cooley, *Const'l Law,* 202–206.

Hinsdale, §§ 598–603.

315. **Congress in the States.** — It has always been the aim of our federal system to prevent Congress from interfering in the states except with those matters under its immediate charge. Yet one power given by the Constitution has furnished the excuse for territorial control of the states by the national legislature. It is contained in Section 4, Article IV, and reads as follows: "The United States shall guarantee to every state in this Union a republican form of government, and shall protect each of them

against invasion, and, on application of the legislature or of the executive (when the legislature cannot be convened), against domestic violence."

Use of the power.

Johnston, in Lalor, II, 543–545.

It must be perfectly evident that the Union cannot exist as a Federal State if the states differ greatly in their political or social institutions, and, consequently, it was necessary to give Congress power to prevent the establishment of monarchical or other anti-republican forms of government. In reconstruction times this clause was given as a reason for the constitutional interference of Congress in the Southern states. It was asserted that a republican form of government did not exist, and that Congress should care for state affairs until it was evident that a republican form of government would be maintained.

The other clauses of this section will be considered under the military power of the executive (§§ 339, 340).

Commercial powers in the convention.

Meigs, *Growth of Const.*, 135–138.

316. Commerce with Foreign Nations. — The lack of power to regulate commerce was one of the principal causes which produced the federal union of 1787. The navigation laws made by Parliament had been so odious that the states were careful not to intrust the Congress of the Confederation with the charge of commercial matters, except so far as they may have been affected by treaties with other countries. But if the history of the Confederation showed anything, it proved that the states were incompetent to deal with a subject in which uniformity was so much needed. There was, accordingly, little difference of opinion among the members of the convention as to the need of central control of commerce, but there nevertheless appeared considerable opposition to giving Congress full power over it. An unsuccessful attempt was made by the anti-commercial element of the South to require all navigation laws to be passed by a two-thirds vote; but by making concessions by which the slave trade was permitted for twenty years, the New England states succeeded in removing the two-thirds clause, so that commercial laws were made in the same way as all others. The agricultural sections of the country were,

however, able to insert in the Constitution a provision that no duty should be laid on goods exported from any state. Duties on imports were permitted as well as other commercial regulations by treaty or by law; but all duties were to be "uniform throughout the United States," and "no preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another."

317. **Means of promoting Foreign Commerce.** — All modern nations have taken pains, directly or indirectly, to promote the commercial interests of their citizens. Almost all seek to protect industry within their borders by protective tariffs; and they are in the habit of bidding for the favor of other nations, by modifying these tariffs, if a similar reduction can be obtained from the country with whom they are dealing. This general principle is called "reciprocity," and has been used by our Department of State under laws of Congress. Another method somewhat similar is to increase trade by treaty through what are known as the "most-favored nation" clauses. That is, if we make a commercial treaty with Italy, in which both parties agree that the other shall have all the advantages of the most-favored nation, then any special privilege Italy may later extend to a third country will, by virtue of the treaty, be granted to us.

Through commercial treaties.

Schuyler, *American Diplomacy*, 421–424.

The Panama canal is the greatest undertaking of the United States government for the development of foreign commerce. This ship canal, costing several hundred million dollars, will stimulate greatly the trade between points on the two oceans. Foreign commerce is also aided by the improvement of harbors, by coast surveyors and patrol, and in numerous other ways.

Canal and Labor improvements.

Ashley, *Am. Hist.*, §§ 439–442.

Still another way of fostering foreign commerce or increasing our carrying trade is by the granting of bounties or subsidies to persons who build and equip American vessels. Foreign states have used this artificial means; but the United States has used subsidies very little.

Subsidies.

Hadley, A. T., in Lalor, III, 820–822.

318. **Interstate Commerce.** — Commerce between the states is necessarily a subject for which the states cannot

Power of Congress.

Cooley, *Const'l Law*, 65, 67–77.

Story, *Commentaries*, §§ 1066–1075.

Boutwell, *Const. at End of Century*, 190–204.

properly legislate. During most of our history the action of Congress has been largely negative, confined to keeping the states from interfering with the navigation and control of rivers that flow through more than one state or between states. With the increase of railway traffic, congressional law became inevitable, and led to the creation of the Interstate Commerce Commission, and to the anti-trust legislation already mentioned (§ 218) and to be discussed later (§ 613, 618).

Aid given by the government.

Johnston, in Lalor, II, 568–573.

The development of inland, as well as foreign commerce, has been assisted by the appropriations made by Congress for the improvement of rivers and harbors. An immense amount of work has been done in widening and deepening channels, in building breakwaters, in erecting lighthouses, and in other ways. The magnitude of these improvements may be indicated by the statement that a single appropriation bill, that of 1897, authorized contracts for the improvement of rivers and harbors aggregating over $60,000,000.

Historical.

Hotchkiss, W. H., in *N. A. R.*, 167 (1898), 580–591.

319. **Bankruptcy Laws.** — Even in 1787 the leaders of political thought realized that bankruptcy laws should not be subject to the differences and uncertainties of state law, but should be the same in New Hampshire as they were in Georgia. In point of fact, Congress has acted tardily and hesitatingly on this important subject, and the states have passed many laws for insolvents which the national courts have recognized as constitutional during the times Congress has done nothing, which cover the great part of the last century. In 1800 a law was passed which was in force three years. In 1841 another bankruptcy law lasted an even shorter time. 1867 saw the third attempt, but this law was repealed in 1878. Finally, in 1898, the present law was passed. A distinction is made between the voluntary and involuntary bankrupt; the former being given the opportunity to pay off his debts with what assets he possesses, while the creditors of the latter are guaranteed protection against fraud and, consequently, against unnecessary loss.

Law of 1898.

Dunscomb, S. W., Jr., in *P. S. Q.* XIII (1898), 606–613.

320. Coins. — In order that the business of a country may not be unnecessarily embarrassed, the central government must be given power to make uniform laws regarding the standards of value and measurement. The Constitution gives Congress the right to determine what metals shall be used for coins, which one or ones shall be the standard, what amount of each metal is to be used in the different pieces of money, and what value foreign coins shall legally have when used in the United States. The Congress of the Confederation adopted the decimal system, suggested by Morris and simplified by Jefferson. This convenient scheme has been continued and is still in use; although until 1900 we had, theoretically, two standards, gold and silver, whereas now we have but one, gold. The states are forbidden to coin money or to issue paper money, but they may create banks, which have the right to issue bank notes — which are never legal tender. At the present time a tax of ten per cent by Congress upon such state bank notes is of course prohibitory. Congress has also full power to punish counterfeiters of national currency, so as to protect the individual in the use of coin of the realm.

National power and state limitations regarding coinage.

Hinsdale, §§ 357–367, 388–390.

321. Weights and Measures. — The English system of weights and measures was in universal use and was, naturally, the one selected by Congress. Several attempts have been made to have the metric system adopted; but although Congress has declared the use of the metric standards to be legal, they have not been widely accepted by the business people of the country.

The English system used.

Hinsdale, § 387.

322. Naturalization. — We have already considered the process of naturalization (§ 252), and can readily appreciate that to leave such a subject to the separate states would be the height of folly. Even when the great majority of the population believed there was no United States citizenship, very few desired to deprive Congress of the power to regulate this subject. The laws passed have not been very different from the one in operation now. Except from 1790 to 1795, when the period of residence required was two

History of naturalization laws.

years, and from 1798 to 1802, when it was increased to fourteen years, the time has always been five years. The most ambitious attempt to keep foreigners from citizenship was that of the "Know-nothing" party during the fifties, a very great extension of time being favored.

Individual and collective naturalization.

Naturalization has been accomplished in one of two ways: individually, where a single person makes out his papers as described; and collectively, where by law or treaty a number of aliens are declared to be citizens, as in the treaty by which Louisiana was purchased, the treaty of Queretaro (1848), or the fourteenth amendment. At present the laws restrict individual naturalization to persons of the white or black race.

Punishment of each.

Hinsdale, §§ 559–568.

Burgess, *Pol. Science*, II, 147–150.

323. **Treason and Piracy.** — The most important crimes that come under the control of the United States government relate to piracy and treason. It is left for Congress to decide what constitutes the former, but the latter is defined in the Constitution. Yet Congress may regulate the punishment of treason as well as of piracy. In reality the laws relating to treason have been marked by leniency. If we are in any doubt concerning this, we have only to compare the wholesale confiscation acts passed by the state legislatures for the Tories at the close of the Revolutionary War with the treatment of the Southerners after the War of Secession.

Hinsdale, §§ 391–398.

324. **Other Powers.** — Among the other powers expressly conferred upon Congress are the right to create post-offices and post roads (§ 358); to vest the appointment of officials in the higher executive officers; to make uniform laws on patents and copyrights for the encouragement of inventive and literary ability (§ 364); to create national tribunals inferior to the Supreme Court (§§ 385–388); to make laws regulating the election of senators, representatives, and presidential electors; to determine the compensation of all national officials; and to provide for amendments to the Constitution by a two-thirds vote of both Houses.

325. **The Elastic Clause.** — As I have already stated in other connections, the power that has infused life into

these powers of Congress is contained in what is known as the "elastic clause," that "Congress shall have power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Constitution in the government of the United States or in any department or officer thereof." It is probable that the different departments of the central government would have sooner or later accepted the doctrine of implied powers without this clause, but the constitutional difficulties would have been very much greater without it. Of late years there has been a tendency to go further than even implied powers would naturally permit, by claiming that powers can be exercised by the United States government because of its inherent sovereignty, without regard to the powers delegated either express or implied. Even supreme court justices, considered the most conservative of our officials, have indirectly given an indorsement of this view in the *Legal Tender Cases* and in later decisions. Such a method of interpreting the powers of Congress will of course insure its ability to legislate for all subjects that may come up, and which even we at this time cannot foresee; but it must have a very great influence on the character of our federal system in the future.

Influence of "implied powers" on position of Congress.

Boutwell, *Const. at End of Century*, 231–233.

QUESTIONS AND REFERENCES

Financial Powers (§§ 301–303)

1. Was too much power of taxation given to Congress by the Constitution? Would it have been beneficial to the country at large to have part of the revenue from imports distributed among the states?

2. What objections are there to having direct taxes levied by the central government? Is the rule that all direct taxes must be levied in proportion to population a wise one at present? Explain your answer fully.

Military Powers (§§ 304–307)

1. Are the dangers that come from lack of military and naval preparation greater or less than those which may result from having a strong army and navy, and what are they in each case?

2. Assuming thorough and careful preparation for war as a necessity, would it be best to devote most attention to the army, the militia, the navy, or coast defence, and why?

3. Have any changes of military policy been caused by the new international relations of the United States? by the acquisition of distant colonies? by the construction of the Nicaragua Canal?

i. How large is our army? Are there any volunteers? Who is the commanding general? What departments are there? How are the forces organized?

ii. Look up the number of each class of vessels in our navy. How does it compare with the number in 1890? With those of the same classes of Great Britain? France? Germany? (Pol. Als.) What is the difference between a battleship and a cruiser? between an armored and protected and an ordinary cruiser?

Territorial Powers (§§ 308–315)

a. "Territorial Growth of the United States," Hinsdale, *How to Study History*, 253–276; Johnston, in Lalor, I, 93–99; Donaldson, *Public Domain*, 89–145; Bicknell, *Territorial Acquisitions of the United States*.

1. At the time, what has been the feeling in regard to the annexation of the territories mentioned in § 310? Has the nation been unanimous about any one? In what instances was there decided protest from particular sections, and from which ones? Is there general regret over any annexation we have made?

2. What constitutional right have the territories to self-government? How are the territorial "constitutions" framed? how amended? Is there government with the consent of the governed?

i. What territories are organized at the present time? What difference is there between the government of Arizona and that of Hawaii? What territories are still "unorganized"? How is each governed? (Revised Statutes and Statutes at Large.)

ii. Make a careful study and a comparison of the governments of Porto Rico and Hawaii. What differences, if any, do you notice in the executive, legislative, and judicial departments in suffrage, in representation in Congress, etc.? (Current History, 1900.)

iii. What was the last state admitted, and when? Were any special restrictions placed upon it or upon those which came in just before it? Can these restrictions be altered by state law?

Commercial and Other Powers (§§ 316–325)

1. Is modern government more or less "paternal" in its treatment of industry and commerce than of other subjects? Make a list of all the things done by the United States government to promote its commercial interests. Are any of them in your opinion unwise?

2. What constitutional rights has the United States to fix rates for interstate commerce? to improve New York harbor? to build the Nicaragua Canal? to give Frenchmen lower rates on imported goods than Brazilians?

3. Are there any other powers besides those exercised by Congress that could with advantage to the United States be given that body? If so, what are they, and why should they be used by the central government?

i. Which of our tariffs have been most distinctively protective, and in what particulars? With what nations have we commercial treaties? Which ones of these permit reciprocity?

ii. How many aliens came to this country last year? Of these, how many cannot be naturalized under the present laws? How many were there from England? Canada? Germany? Italy? Hungary? What nations have sent the largest number of persons since 1820? (Pol. Als.)

CHAPTER XIV

THE PRESIDENT

General References

Hinsdale, *The American Government*, 248–283.
Bryce, *The American Commonwealth* (abd. ed.), 22–63.
Harrison, *This Country of Ours*, 68–180.
Burgess, *Political Science and Comparative Constitutional Law*, II, 216–263.
Wilson, *Congressional Government*, 242–273.
The *Federalist*, Nos. LXVII–LXXVII.
Meigs, *Growth of the Constitution*, 192–234.
Stanwood, *History of the Presidency*. Candidates, issues, platforms, and political conditions of each campaign.
Mason, *The Veto Power*.
Baldwin, *Modern Political Institutions*, 80–116. Discusses the absolutism of the presidency.
Lalor's *Cyclopedia*.

Head of the executive hierarchy.

Goodnow, *Comp. Admin. Law*, I, 62–70.

326. The President's Position. — The most conspicuous personage connected with our system of governments is the President of the United States. This is due not only to the method of election, which serves to centre popular interest in the presidency once in four years, but to the prominence of the duties assigned our executive and the centralization of executive power in his hands. He represents most nearly the sovereignty and dignity of the nation in all international relations, in the control of military matters, and in affairs of peace. He controls absolutely the executive department, not so much because the Constitution vests him with executive powers, as for the reason that all executive officials are directly or indirectly appointed by him, can be removed at any time, and are

responsible to him in the performance of their duties. That is, the executive department is the most completely organized part of the United States government, every inferior civil officer being directly subordinate to the President, in whom is centred all power. In this respect he presents great contrast to the English King, whose functions are exercised by a body no longer responsible to him, and to the state governor, who has no control whatever over the majority of the executive officials in his state.

Constitutional and practical requirements.

Cf. Meigs, *Growth of Const.*, 209–211, 312–314.

327. **Qualifications.** — In the election at the present time, the constitutional qualifications are the same as those existing one hundred years ago; but there are certain other requirements that usually have to be met. The Constitution prescribes that the President must be at least thirty-five years of age, a native-born citizen, and a resident of the United States for fourteen years. It is hardly necessary to add that at the present time he must be identified with one of the political parties, and run as the candidate of that party.

The third term tradition.

Tiedemann, *Unwritten Const.*, 51–53.

McMaster, *With the Fathers*, 55–70.

328. **Term and Compensation.** — It was only after a great deal of discussion and many changes that the convention of 1787 finally selected four years as the term of office. As nothing was said about reëligibility, it remained for custom to place a fixed limit upon the term possible for any one man. It would have been easy for either Washington or Jefferson to have been chosen a third time, but each preferred the seclusion of private life. Later Presidents did not wish to alter the rule; and since the futile attempt made by Grant's adherents to nominate him a third time (1880), it has been more difficult but not impossible for any one to break the "third term tradition."

Agitation for a six-year term.

Bryce, 52–56.

There has recently been quite a little discussion about altering the term of office, going back to the six or seven years preferred by the convention at first, and not allowing the President to be reëlected. The reasons for this suggestion are found in the objections to the exciting campaign every four years, and to the bad effect which a desire

to remain in office has upon a President's policy during the last two years of the first term. There can be no doubt that these objections are well grounded. Yet there is much to be said on the other side. Four years have been all too long for some of the Presidents we have had. Six years would mean no reëligibility, so that a satisfactory President could not be retained. Or if he might be elected again, he would have a stronger hold upon the patronage, which always plays a part in elections, and would pander still more to popular prejudice, as reëlection would be more difficult if the term were six years.

Salary.

The salary of the President was at first $25,000 a year. In 1909 it was raised to $75,000. In addition, the executive mansion is placed at the disposal of the President, and the government pays most of the expenses incurred in the performance of diplomatic and social duties, aggregating about $200,000 a year.

Method from 1788 to 1804.

Johnston, in Lalor, II, 60–69.

Hinsdale, §§ 451–460.

Harrison, *This Country of Ours*, 73–84.

329. **First Method of Election.** — As we have already seen, the constitutional convention, after considering many ways of choosing the President, finally decided to leave the choice with electors chosen by the states in the way prescribed by each. These electors were equal in number to the representatives and senators from that state, and were, at the first, usually themselves elected by the state legislatures. It was the intention to name the best men possible, and permit them to use their own judgment in the selection of the executive, the only limitations upon the freedom of choice aside from the qualifications named above being that the candidates for President and Vice-president should not both be from the same state. At the first elections the electors did not vote for separate candidates for the two offices of President and Vice-president, but cast two ballots (Constitution, II, § 1, cl. 2) for President. The person receiving the highest number was then declared President, and the second on the list was declared Vice-president. Owing to the difficulty that arose from the Jefferson-Burr contest of 1801, this method was superseded in the twelfth amendment by that in use at the present. Even before that time the electors had become a mere cog in the machine, registering the popular will.

The nominating convention.

330. **Nomination of a President.** — The method of choosing a President now in use involves the nomination, the

choosing of electors, and the meeting of the electoral college. The nomination at the beginning was by general consent, later through congressional caucuses, and since 1832 by national party conventions. The convention ordinarily consists of twice as many delegates as there are members of Congress, and is held in May, June, or July of the presidential year. Candidates have been suggested in different parts of the Union, and each has had his agents busy for the purpose of securing delegates favorable to himself. It may sometimes be known before the convention meets who will be nominated, but such cases are not common. It usually requires quite a number of ballots to decide what person shall be the nominee. He is soon after informed of his nomination, and sends in his letter of acceptance, which may amount to a second platform. (Cf. §§ 546, 547.)

Bryce, *Amer. Commonwealth* (3d reg. ed.), II, 185–202.

In the selection of candidates it often happens that the ablest leaders of the party are set aside for a comparatively unknown man. This is especially apt to be the case where several ballots have been taken without result, so choice falls upon a "dark horse." But it is due still more to the lack of availability often found in a man of parts. During his long public career he has probably made many enemies, and excellent though his record may be, he will poll fewer votes than a new man. He may not be from one of the large states, or one of the close states, which the party feels must be carried.

Conditions affecting nomination.

Bryce, 58–63.

Cf. Wilson, *Cong. Gov't*, 246–254.

331. **The Campaign.** — The campaign begins early in the autumn, or it may date even from the latest convention. Each party seeks to perfect its organization, to collect large campaign funds from prominent members, and persons especially benefited by the policy of the party, and to whip into line the malcontents who may be dissatisfied with the candidate or the platform. Less attention is now paid to those features which attract and excite, and the campaigns are more likely to be "educational." Through the platform and the press, party orators and writers aim to

Methods used.

Bryce, *Amer. Commonwealth* (3d reg. ed.), II, 203–212.

explain the principles they indorse, and by argument and illustration to convince those who come within the sphere of their influence. This difference in method is accompanied by a less blind adherence to parties for their own sake than was common fifty or even twenty years ago, though we cannot yet boast that the educational standard of the campaigns is high.

Objections to the campaign.

Bryce, 214, 215.

It can readily be appreciated that the business of the country is greatly disturbed by this excitement and the uncertainty of the policy to be pursued by the new government. The campaign really lasts for six months, and during this time there is a marked business depression, as no one is willing to buy or sell more than is necessary until he knows what is going to be done. Another objection to this quadrennial upheaval is the danger that arises from disputed elections. The excitement in 1801 and 1877 was so intense that nothing but the good sense of the persons most interested, and the self-control of the people prevented disorder. In a South American State nothing could have averted a revolution. There is danger, also, that if the issues are at all sectional, the people will become more conscious of their antagonism to each other, and that, consequently, sectionalism will be increased. Yet with all its disadvantages there is no one thing that has brought the people so close to the national government, or has made them so familiar with its plans and needs, as the presidential campaign. With our democratic institutions it seems worth all it costs.

Organization and election.

Burgess, *Pol. Science*, II, 216–221.

332. **The Electoral College.** — The vote is polled the Tuesday after the first Monday of November in leap years and 1900. Two things should be noticed: first, the candidates for President and Vice-president are not the ones voted for, though their names may appear upon the ballot; but in place of them are the party electors, equal in number to the representatives and senators in that state. If the vote of the state is close, it may be found that some of the electors of one party have been chosen while the rest are

from another party. Second, the suffrage depends upon state law, with certain limitations (United States Constitution, Amendments XIV, XV). For this reason we find women voting in Wyoming, while in Louisiana many of the adult males are shut out by the alternative educational or property qualification.

Selection of President.

Burgess, II, 221–225.

As soon as it is known how the vote of the state stands, there is no longer any doubt about who will be next President. To be sure, the obligation on the part of an elector to vote for his candidate is a purely moral one, but is not likely ever to be broken. The actual election of the President occurs on the second Monday of January, when the electors meet at their state capitals and cast their ballots. These are forwarded by mail and by messenger to the president of the Senate, who opens and counts them in the presence of both houses of Congress on the second Wednesday of February.

The electoral count bill.

Burgess, II, 224–238.

333. Counting the Electoral Votes. — A good deal of difficulty has been caused by contests over what electors should be recognized in case of dispute. The election of 1876 is the one whose result turned upon the decision of this question. Two lists of electors were sent in from Louisiana and other states. In the House the Democrats had a majority, and in the Senate the Republicans, so that no settlement could be made by regular vote. It was finally decided to have a commission of fifteen members, five from each house and five from the Supreme Court, who should have power to count the votes. This was done, and a decision rendered two days before the date set for inauguration. In 1887 Congress passed the Electoral Count Bill, according to which all future difficulties are to be solved. The states have full charge of elections, and decide what electors have been chosen. If only one set of electors is returned by a state, they are accepted without question. If there are two sets, but one has been declared legal by a court, or one has the state executive signature while the other has not, that one shall be received.

Historical methods of selecting electors.

The method of choosing the electors is now uniform throughout the country, but has varied greatly in times past. At first the system of election by legislature was quite common, and was in use in South Carolina until 1860. Rhode Island was the first state to regularly adopt the election by general ticket in 1800. The district system

was extensively used from 1792 to 1832, but since that date Michigan has been the only state that has tried it. (For details the student is referred to Hinsdale's *American Government*, p. 259.)

Proposed election by popular vote.

Carlisle, J. G. *Forum*, XXIV (1898), 651–659.

334. **Other Plans of choosing the President.** — During the last few years there has been a strong movement to change the Constitution so as to have the President chosen by popular vote of the whole country. This would do away with the possibility of electing as President the candidate who polled fewer votes than his opponent. It would make it unnecessary to select men just because they could carry close states, it would reduce the chances of electing a candidate by bribery in a close state, and it would seem to be more in accordance with present-day methods. On the other hand, it would require a constitutional amendment which would be difficult to get. Uniform suffrage laws would be a practical necessity; and, in view of the closeness of the popular vote in recent elections, election by fraud would be even more dangerous than under the present system. It is possible that some plan of minority representation may be devised that will permit us to choose our electors as at present, and yet gain all of the advantages of election by popular vote.

The Vice-president.

Burgess, *Pol. Science*, 238–240.

Johnston, in Lalor, III, 134, 135.

335. **Presidential Succession.** — In case of death or resignation of the President he is succeeded by the Vice-president. This official must have the same qualifications, and is chosen in the same way as the President. It has been the custom to give the second place on the ticket to a second-rate man, who will be likely to bring the party votes at the November election. The danger of selecting a factional leader not in harmony with the party is clearly shown in the administrations of Tyler and Johnson.

The Cabinet.

If both the President and Vice-president should die, the succession lies with the members of the Cabinet, beginning with the Secretaries of State, Treasury, and War, and continuing in the order in which the portfolios were created. Before 1886, by the law of succession (which may be altered by Congress at any time), the presiding officer of the Sen-

ate, and then of the House, was to become President in case of vacancy. This was open to two serious objections. These officials might belong to a party different from that of the President, and by the death of President and Vice-president, when there was no president *pro tempore* of the Senate or speaker of the House, the presidency might lapse altogether.

The ceremony and the address.

Harrison, *This Country of Ours*, 91–97.

336. The Inauguration. — The inauguration of a President occurs on the 4th of March following his election. It is one of the most prominent social events connected with the life of the nation. The ceremony is quite impressive, and always draws large numbers of strangers to Washington. After taking the oath of office, which is administered by the chief justice, the President delivers his inaugural address. This may outline his general policy and be a document of considerable weight, as in 1800 and in 1860, but it ordinarily has little influence on the course of events.

First months in office.

Immediately after the inauguration the President calls the Senate together, unless it is his second term. To it he sends his nominations for cabinet and other prominent officers, who have, in all probability, been selected several weeks before. He is apt to devote most of his time during the first summer to the selection of the persons whom he shall appoint to various offices under the government.

Executive power in the eighteenth century.

Goodnow, *Comp. Administrative Law*, I, 53–61.

337. Powers: Historical. — When the Convention met in 1787 the feeling of distrust of "one-man power" was quite prevalent. The abuses by colonial governors had been so numerous, and the actions of George III so objectionable, that the first state constitutions either did not recognize an executive at all, or placed the executive powers in the charge of a committee; or if the executive was single, reduced his powers to a minimum. A slight reaction against this extreme position occurred during the next ten years, and was undoubtedly strengthened by the executive inefficiency of the committees of Congress. In all proba-

bility, however, the extensive powers given the national executive by the Constitution was due to the expectation that Washington would be the first President, and popular confidence in him made the national and state conventions less unwilling to grant these powers. Yet it must be admitted that our early executives exercised control less through their constitutional powers than through their personal influence.

Execution by peaceful means and through the army.

Harrison, 113–118.

338. **The Execution of Law.** — The oath which the President takes upon entering office lays upon him the duty of seeing that the laws are faithfully executed. This may be done in one of two ways: by the regular machinery of the executive department, or by the use of arms, *i.e.* coercion. As the laws generally operate upon individuals, it is seldom necessary to call upon the military forces unless the opposition to the law is widespread and takes the form of disorder and insurrection. At such times the execution of the law has never been long delayed, except in the case of the seceded states.

Ordinance-making power.

Frequently the laws passed by Congress are general in their character, and in administering them it is necessary for the President or his assistants to arrange the details. They are thus permitted to use their discretion in the methods chosen and the officials through whom the law is administered. These details are regulated by ordinances which give the executive much greater power than he would otherwise have, though they are much less common in this country than in England and France.

Extent of the power.

Schouler, J. B., in *Forum*, XXIII (1897), 70–74.

339. **Military Powers.** — By the Constitution the President is made commander-in-chief of the army and the navy, and of the militia when in active service of the United States. In ordinary times these powers are of comparative insignificance; but in great crises their use makes the President a dictator. This was plainly the case with Lincoln during the War of Secession. According to Bryce, "Abraham Lincoln wielded more authority than any single Englishman has done since Oliver Cromwell." It was by

virtue of his position as military commander that he suspended the privilege of the writ of *habeas corpus*, and that he issued the Emancipation Proclamation.

As a President may enforce his proclamations by military power, they rather than the statutes become the law *de facto*. The extent to which this power might be abused by a strong-headed yet incompetent President can readily be seen; but in our country such an abuse is likely to be checked, without great difficulty, through public sentiment and action by Congress.

Instances of its use.

Harrison, 118–125.

Cf. Story, *Commentaries*, §§ 1209–1215.

340. Use of the Army in Internal Affairs. — The President is also authorized to keep the peace of the United States and use the army when called upon by the state legislatures, or the governor when the legislature is not in session. This power has been used most frequently in connection with strikes covering a considerable area. When such a strike leads to rioting, which in turn interferes with interstate commerce or the United States mails, there can be no question that the President may use the army with or without the application of the state executive. This was done in 1894, in spite of the protest of the governor most concerned.

Patronage in the eighteenth century.

Eaton, D. B., in Lalor, III, 139–145.

341. The Power of Appointment in History. — The proper control of this power is a subject to which great consideration has been given in Anglo-Saxon countries for the last two centuries. The extent to which patronage and bribery were used by Walpole, and afterward by George III, in order to maintain a majority in Parliament, is well known. During the Revolutionary War and the years immediately following, both England and America sought a solution of the problem: the one by giving the legislature more power over the executive; the other by placing the power of appointment in the hands of the legislature. In the Convention of 1787 it was at first proposed to leave all appointments to the Senate. Later, the President was given the right to choose persons for all important places with ratification by the Senate, and the others could be vested by Congress in whomever it pleased. But no member of Congress was to hold any civil office under the United States or to be appointed to one which had been created or of which the salary had been increased during the term.

Number and importance of appointive positions.

Hinsdale, §§ 491–496.

Bryce, 44–48.

Harrison, *ibid.*, 100–104, 107–112.

342. Appointment at Present. — As there are nearly four hundred thousand positions besides those of the army and navy to which persons must be appointed, the vastness of this power is evident, especially as it is the custom for a new President to replace incumbents with his own friends or politicians to whom he or the party leaders are indebted, even when his predecessor was of the same political faith. It would of course be absurd for the President to try to fill all of those personally, and most of the minor appointments have been left with officials belonging to different departments. Nevertheless, the President possesses the great nominal power of appointing to all important places, numbering eight thousand. These include the members of the Cabinet and their immediate subordinates, the federal judges, ambassadors, ministers and consuls and the highest classes of postmasters. All of these appointments must be confirmed by the Senate, and this makes a great deal of difference with the practical working of the system. The Senate now seldom refuses to confirm those whose duties bring them into close relations with the President, *e.g.* heads of departments; but in the appointment to positions throughout the country, the President seldom refuses to appoint those favored by the senator from that state. This system of "senatorial courtesy" has been in use more or less since the government was first organized, but has been developed because rotation in office became the rule when the presidency became democratic, and because of the executive subordination to Congress which grew out of reconstruction disputes.

Defects of the present methods.

Eaton, in Lalor, I, 580–582.

343. Observations on the Power of Appointment. — This duty of appointment is one of the greatest burdens of the presidency, even if one of the greatest sources of influence. To be sure, it enables the incumbent to pay political debts, and secure aid during elections, which could not be obtained without the promise of a reward. But most of the offices must be given to the friends or assistants of others, especially the senators. For this reason few of the appointees

represent his own personal preference; the great majority are selected for him, or are picked from candidates named by political leaders, to whom he is practically restricted. With responsibility so scattered, there is no one who can be blamed or praised as the case demands. The President is bound hand and foot nine times out of ten, and the only wonder is that the vicious system has done so little damage as it has.

344. **Removals.** — It is now admitted in law and in practice that the President has the right to remove any official he may appoint. But interesting conflicts have occurred over this very power. The Constitution neglects to state in whom the right of removal is vested, and during the first year of Washington's administration there were various opinions regarding it. In 1789 a resolution was passed by Congress which declared that it belonged to the President alone. This practice was changed by the famous Tenure of Office Act that was passed by the reconstruction Congress (1867), and for twenty years removals required the indorsement of the Senate. In time this became so objectionable that the law of 1867 was repealed in 1886, so that since that time the President's power of removal has been plenary. The successor is at once appointed, and may hold office without confirmation till the close of the next meeting of Congress.

Practice since 1789.

Cf. *Federalist*, No. 77.

Hinsdale, §§ 497–502.

Eaton, in Lalor, III, 565–569.

Cleveland, in *At. Mo.*, LXXXV (1900), 726–732.

345. **The Civil Service.** — As almost all of the persons connected with the United States government belong to the administrative service, it is absolutely necessary, if good results are to be obtained, that the ones appointed should be competent, and that their tenure should be secure. Our custom, most of the time under the Constitution, has been in violation of these unquestioned principles. The beginnings of the spoils system are usually traced to the Crawford Act of 1820, which made the tenure in the treasury department four years. With the development of ultra-democratic ideas later, every branch was invaded, and not even a four-year term guaranteed. An

The spoils system and competitive examinations.

Eaton, in Lalor, I, 478–485.

Lodge, *Hist and Pol. Essays*, 114–137.

Larned (ed.), *Hist. for Ready Ref.*, VI, 145–148, VII, 104–108.

Reinsch (ed.), *Readings on Am. Federal Gov't*, 683–702.

attempt at reform was made in the early seventies under Grant, but failed. In 1883 the Pendleton bill was passed, a civil service commission was created, and competitive examinations were required for certain positions, whose number may be increased or diminished by executive order. Since that time progress has been steady, till, in 1909, about sixty per cent of three hundred fifty thousand administrative positions connected with the national government were filled by the civil service commission, the greatest number of changes having been made by Presidents Cleveland and Roosevelt. While the civil service laws may have been far from perfect, and the system is as yet crude, it marks a vast advance over that in use before; and it will in time be improved, as needs make themselves felt. If certain other positions, especially those connected with the diplomatic and consular service, could be added, the gain would be much greater. The friends of reform, however, feel grateful that every attempt of Congress to return to the old system has been baffled by public opinion.

Executive and legislature never entirely separate.

Johnston, in Lalor, III, 1064–1067.

346. **Legislative Powers; Historical.** — That the complete separation of the three great departments is theoretical rather than practical, is shown by the fact that even in 1787 no attempt was made to leave the executive without legislative duties. We have already seen the great part played by the King in the business of legislation, and we find a survival of these legislative powers in those assigned the President. The Crown's initiative in legislation appears in the President's message, while the Crown as a third house has been changed into a modified veto upon all legislation. A century's development has shown the wisdom of these constitutional provisions, and has led to other relations between the two departments not contemplated by the constitutional Convention. This important subject will be considered in another chapter (XVII).

Character of the annual message.

347. **The Message.** — The President's annual message is always sent to Congress the first week of each session. It

is usually little more than a summary of the work of each of the executive departments, with some suggestions on that work. Occasionally a large part of the message is taken up with the formation and statement of some policy; but this is not common, as the message nowadays exerts but little influence on the course of legislation. A notable exception was the tariff message of Cleveland, in 1887. When the Presidents were in closer touch with Congress, the message had an importance that it now lacks, and the houses often spent considerable time in "Committee of the Whole on the State of the Union" considering the policy of the President.

Special messages.

Special messages are often sent. If these relate to some subject of great popular interest, their influence upon legislation is marked and immediate, *e.g.* when McKinley asked for money to render the army and the navy more efficient, in the spring of 1898, before war had been declared, both houses passed the bill by almost unanimous votes, and the House within a space of two hours. But even with special messages, it is the pressure of public opinion, rather than the power of the President, that leads to favorable action.

Importance of the veto.

Bryce, 41–44, 163–166.

Harrison, *ibid.*, 126–134.

Cooley, *Const'l Law*, 166–169.

348. **The Veto.** — During the early part of the century the veto was seldom used, and when employed was effective, as but one bill was passed over it before the administration of Johnson. Since then it has been employed more often, but usually upon bills of minor importance. That it gives the President a real power must be evident if we consider that legislative bodies seldom possess a two-thirds majority in favor of any measure likely to be disapproved by the executive, and that this disapproval will probably influence the action of some of the members. The "pocket veto" really gives the President undue power, owing to the unfortunate custom of passing many bills during the last three or four days of each session; but as most of these are ill-considered, their failure is less of an injury to the country than their success would have been.

Veto and appropriation bills.

Johnston, in Lalor, III, 642–645.

The President does not possess the right conferred upon some state governors of selecting particular provisions of appropriation bills which he may disapprove and, therefore, wish to veto. As the appropriation is absolutely necessary, Congress has often found occasion to attach other bills, called "riders," to the appropriation bills in order to keep one house or the President from preventing their passage.

Treaties and statutes.

The making of treaties.

Hinsdale, §§ 485–490.

Story, *Commentaries*, §§ 1504–1523.

Harrison, 134–141.

Cooley, *Const'l Law*, 30, 106.

Boutwell, *Const. at End of Century*, 293–296.

349. Treaties. — While the making of treaties is diplomatic, and not legislative, it ranks as but little less important than the power to make laws. With the Constitution and the United States statutes, the treaties constitute a part of the supreme law of the land; a treaty legally superseding a previously existing statute with which it is in conflict, although it in turn may be abrogated by a later law and may, in fact, be practically nullified by the failure of Congress to make appropriations or pass laws necessary to carry it out. The part played by Congress in the making of treaties is undoubtedly responsible for this somewhat anomalous condition. While the treaty must be ratified by two-thirds of the Senate, the character of the work of negotiation requires that it shall be done as secretly as possible, and through the proper executive department. But as a good treaty that will be rejected is less valuable than one with more imperfections, but acceptable to the Senate, the members of the Committee of Foreign Affairs are usually consulted before the negotiations are closed. Even then it may be impossible to obtain the consent of the necessary two-thirds.

Changes that may be necessary.

Were we surrounded by powerful neighbors, our foreign relations would be vastly more complicated than they are, and our present methods would present grave dangers in two ways. First, we should find that our cumbersome method of making a treaty would have to be replaced by one simpler, but more effective, withal less democratic. Second, we could hardly avoid international complications due to the fact that the administration of many matters

with which our treaties deal has been left to the state governments.

Acquisition of territory.

Johnston, in Lalor, I, 93–99.

350. **Other Foreign Affairs.** — Closely connected with the treaty-making power are two others of great practical importance. One of these grows directly out of the power to make treaties — it is the one that deals with the acquisition of territory. As we have seen (§§ 156, 157), the Louisiana difficulty was solved in that way, and since that time there has been little or no question that the President possesses the initiative in extending our limits. When we consider how our history might have been different with the Mississippi as our western boundary, and how it is likely to be changed through the control of our new colonies, we certainly cannot doubt that the executive possesses a very great power.

Recognition of foreign governments.

The second of these powers comes from the President's right to receive and dismiss the representatives of other nations, and deals with the recognition of a foreign government when two parties each claim to possess control of it, or when the independence of some colony that has thrown off the provincial yoke is involved. Notwithstanding the claim that Congress could settle all such questions by its independent action, an unbroken line of precedents leaves the decision entirely with the President.

Reprieves and pardons.

Harrison, *ibid.*, 142–148.

351. **Judicial Power.** — The King's position as the fountain of justice survives in the power of pardoning and reprieving. This extends to all offences except that of impeachment. An effort was made immediately after the War of Secession to make an exception of treason as well, but it was unsuccessful. In time of peace this power does not possess the significance that attaches to the pardon of the state governors, because of the difference in conditions. The number of offences against national law are comparatively few, and the chance that the President will seek to make political capital by a free exercise of the right to pardon is much less to be feared.

QUESTIONS AND REFERENCES

Election (§§ 326–336)

a. Tables showing votes in presidential elections are given in Johnston, *American Politics*, Appendix; in some Political Almanacs; in Stanwood's *History of the Presidency*, under each campaign; and by Johnston, in Lalor, II, 53–60 (to 1880).

b. On the election of 1876, consult Johnston, in Lalor, II, 50–53; Stanwood, *History of the Presidency*, 356–393; Cox, *Three Decades of Federal Legislation*, 651–668.

1. What advantage would be derived from making the heads of the departments more independent of the President? what disadvantage would there be?

2. Summarize the benefits of a four-year term; one of six years. If we had civil service reform for almost all of the positions in the executive department, would reëlection be less objectionable?

3. Was the first method of electing the President better in any way than that now in use? Do we need a change in the present method? How?

4. Show whether fraud and intimidation would have more influence over the result if there were election by popular vote or by states.

i. During the last presidential campaign, what candidates were before the conventions? How many ballots were cast at each? Was there any dispute over any plank of the platform? If so, what one? What was the vote on it? Compare the last nomination with those since 1876. (Some Pol. Als. for votes on candidates.)

ii. How many members of the "electoral college" are there? How many are necessary to a choice? Study the electoral and popular votes in recent elections. Have we had any minority Presidents since the Civil War? If so, when? How many electors has your state? How have they voted in recent elections?

iii. Who were the delegates-at-large from your state and the delegates from your district to the last Republican and Democratic conventions? Who were the electors in your state? Did the convention or the college get the better and the more prominent men? Can you account for this state of things?

iv. What Presidents have been chosen west of the Mississippi? What states have had the greatest number? Do you notice any tendency to select Presidents from particular sections during special periods? Can you give any reasons for this?

Executive and Administrative Powers (§§ 337–345)

a. Compare the executive in England, France, Germany, and the United States. Wilson, *The State*, §§ 415–418 (Fr.), 498, 530–542 (Ger.); Burgess, *Comparative Constitutional Law*, II, 185–215 (Eng)., 216–263 (U. S.), 264–287 (Ger.), 288–306 (Fr.), 306–319 (comparison of all).

1. Is it wise to have great civil and military power centred in a single individual? Have our war Presidents been elected on military records? Would it have been more satisfactory to have had them exercise no war powers? Have our generals made better Presidents than the average non-military President?

2. What objections may be urged against the use of the United States army in internal affairs? Are they well grounded?

3. Can you suggest any way of securing greater responsibility for the appointments under the executive department?

4. Of what does civil service reform consist? What are the dangers of too permanent tenure? Are examinations a satisfactory test of fitness?

i. Name a recent instance of the use of military force by the United States in suppressing riot. What reason was there for national interference? Were there any protests from any quarter?

ii. Consider to what extent the President considered his own wishes in these appointments: the Secretary of War; the governor of New Mexico; the ambassador to France, the consul at Hamburg: the postmaster of your own town; the United States marshal of your district; the collector of the nearest port.

iii. What persons connected with the postal service are appointed under competitive examinations?

Legislative Power (§§ 346–351)

1. Does the veto give the President too much power over Congress? Has it been abused? Select instances where it has been productive of good results.

2. Should the President be granted exclusive power to make treaties? What check is there upon executive action regarding the acquisition of foreign territory and the recognition of foreign governments?

3. Would it be desirable to discontinue the President's message or any feature of it? Should it be obligatory upon Congress to consider, under the form of a bill, suggestions of the President?

i. What were some of the bills vetoed by Johnson? What was the character of most of those vetoed by Cleveland? What was the occasion of the last veto? Its effect?

ii. Look up the last presidential message. Is it full of "glittering generalities"? What portion of it is devoted to foreign affairs? finance? colonies? What policy is suggested? (American monthly *R. of R.* for last January, etc.)

iii. What important treaties were ratified by the last Senate? Where, and by whom, were they made?

CHAPTER XV

THE EXECUTIVE DEPARTMENTS

General References

Willoughby, *Rights and Duties of American Citizenship*, 215–241. Excellent.

Clark, *Outlines of Civics*, 61–71. Brief, but detailed.

Congressional Directory. The best summary of the work of each bureau and division.

Dawes, *How We are Governed.*

Harrison, *This Country of Ours.* By far the best general description and popular account.

Lamphere, *The United States Government.*

Elmes, *Executive Departments.* Quite full, but not recent.

Guggenheimer, *Development of the Executive Departments* (under the Confederation); in Jameson, *Essays in the Constitutional History of the United States.*

Lalor's *Cyclopedia*, under the different departments.

The heads of departments as a Cabinet.

Bryce, 68–70.

Harrison. *This Country of Ours*, 104–107.

Wilson, *Cong. Gov't*, 257–266, 269.

352. **Introduction.** — While the power of our national executive belongs almost exclusively to the President, the administration of its business rests with the executive departments. At present there are nine of these, the departments of State, the Treasury, War, Navy, Post-office, Interior, Justice, Agriculture, and of Commerce and Labor. At the head of each department is a secretary, appointed by the President and personally responsible to him. While the heads of the departments, collectively, form the Cabinet, they influence the action of the President more as the heads of departments than as members of the Cabinet. The Cabinet as such has no policy of its own, and even if it had one the President would be in no way bound to follow it; but he is quite likely to leave the administration

of the affairs in the departments to their respective chiefs. These officials are usually aided by quite a number of assistants and by many heads of bureaus and divisions, in whom is often vested considerable power of appointment and some discretion as to management.

Clerical and diplomatic duties.

Harrison, 187–193.

Schuyler, *Amer. Diplomacy*, chap. I., esp. pp. 6–14.

353. **Duties of the Secretary of State.** — Because the department of State attends to all affairs concerning our relations with other countries, it is placed first in the list of departments. Its principal duties are of two kinds: first, those of a clerical nature, such as the enrolment of the laws, the care of the archives, and the keeping of the Great Seal. Second, those that deal with foreign nations. The latter may be subdivided into those that are really diplomatic and those that affect the consular service. The diplomatic duties are the most important as they have the greatest bearing upon affairs of state. As the secretary is usually a man skilled in international law, and is assisted by men who are experts, the negotiation of treaties, under certain limitations laid down by the President, is ordinarily left in his hands. In this foreign intercourse it would be awkward for our secretary to communicate directly with the foreign secretary of the nation interested, so negotiations are conducted at the capital of one country, the other being represented by its ambassador or by envoys appointed for the occasion. In cases of peace treaties after hostilities have ceased, some neutral capital is selected and special commissioners are employed.

For a list of the bureaus and divisions into which the departments are divided, and for a summary of the duties assigned to each secretary, assistant, commissioner of bureaus or heads of divisions, the student is referred to the Congressional Directory. As these books are easily obtained, no details of that character need be given in this chapter.

Classes of diplomatic representatives.

354. **The Diplomatic Service.** — Our business of a diplomatic nature is intrusted to ministers and assistants at the capitals of all important foreign countries. Our ministers

to the great nations are called ambassadors, to other nations ministers plenipotentiary or ministers ordinary. We may be represented merely by a *charge d'affaires*, a secretary of a legation, or may conduct our business through the minister of some other power. These officials are party men, whose tenure is therefore insecure. They are chosen not necessarily on account of their fitness for these positions, but for many other reasons. Neither they nor their chief assistants are trained for their work; but in spite of this defect our diplomatic service compares very favorably with that of most other countries.

Woolsey, *International Law*, § 98.

Harrison, 194–196.

Curtis, *U. S. and Foreign Powers*, chap. I.

355. **Consuls.** — The work of our consular service is almost purely of a business nature. The consuls are agents living in all the important cities of the globe. Their duties are many. They attend to the business of our government at that place, keep us posted as to the business conducted there, especially the character of its exports, and look after American merchants, seamen, or tourists who may need assistance of any kind. Among certain semi-barbarous peoples, cases affecting Americans are brought up for trial before the consul rather than in the courts of the country. It was formerly our custom to change consuls with a change of administrations at Washington, although certain posts where the remuneration is small were left in the hands of resident merchants. This custom was most unfortunate. The best of men cannot do satisfactory work for the first year or two in a position where the language and the conditions are entirely unknown ; and where a consulship is given solely as a reward for party service, and the tenure is brief, the result cannot be in doubt.

Consular duties.

Woolsey, §§ 99, 100.

Curtis, chap. I.

Schuyler, *Amer. Diplomacy*, II.

356. **Reform of the System.** — That our diplomatic and consular service has not been more of a failure has been due undoubtedly to the great adaptability of the American temperament. But because of that very characteristic, our system should have been the best in existence: and it can be made so. The prime necessity is a corp of competent and trained men, fully equipped for the special work

Changes needed.

Parker, G. P., in *At. Mo.*, LXXXV (1900), 669–683.

New consular law (1906).

Williams, C. A., in *World To-day*, 10 (1096), 393–397.

Reinsch (ed.), *Readings on Am. Fed. Gov't*, 651–682.

assigned them and held to their best efforts by reasonable permanence of tenure and promotion on merit. A great advance has been made, by securing for the consular service, in the law of 1906, a more scientific classification of positions, and by applying to the service the principles of appointment on merit and promotion from lower to higher positions for proved efficiency. Recent Presidents have followed to some extent the practice of promoting ministers from minor positions to those of greater importance, but it sometimes happens that men of the best qualifications for ambassadors could not be induced to enter a service in which experience is required for the best places.

Purpose.

357. **The Post-office; History and Purpose.** — The post-office is the only important example of a business actually conducted by the national government. The object is not to make money, but to give the people the best service possible at practically cost. The department has, in fact, been run at a loss for many years.

History.

Harrison, 233–240.

The postal system was under the control of the government even in colonial times, but the rates were exorbitant and methods in use were very different from those of the present. Letters were often the only things carried, stamps were not used, and postage was not paid in advance. After Sir Rowland Hill had demonstrated in England the advantages of stamps and a reasonable rate, not dependent on the distance, we adopted, in 1847, a modification of this plan. Rates have been lowered as rapidly as possible and routes extended to all parts of the country. Free delivery has been given to cities, to some towns, and in a large number of rural districts.

Four classes of post-offices.

Fairlie, *National Administration*, 179–185.

538. **Organization and Work of the Post-office.** — Post-offices are divided into four classes, according to the amount of business transacted. Postmasters are appointed by the President for the first three classes, but they number only seventy-five hundred. About one-half of the other fifty thousand are appointed nominally by the Postmaster-general, really by congressmen or members of the dominant party in the district in which the office is located. About one-half of the fourth-class postmasters are subject to the

civil service rules, and all mail clerks and carriers are obliged to pass examinations.

Postal savings bank.

As postal savings banks have proved successful in other countries, and as more than 98 per cent of the savings deposits in the United States were in fourteen states, there was adopted in 1910 a postal savings bank system. The Postmaster-general, Secretary of the Treasury, and Attorney-general, as trustees, may designate post-offices at which deposits shall be received in sums not less than one dollar, with a maximum deposit of $500 for any person. These deposits are to be placed in near-by accredited banks which guarantee these deposits, or invested in government bonds under certain conditions. The depositors receive two per cent interest.

Meyer, G. v. L., in *R. of R.*, 39 (1909), 47–48.

N. A. R., 191 (1910), 449–464.

Four classes of mail matter.

Mail matter belongs to one of four classes. The first includes letters ; the second, periodicals ; the third, books ; and the fourth, merchandise. In addition, the department issues money orders payable at any post-office or at certain points abroad. For the carrying of the mail contracts are made by the Postmaster-general with steamship and railway lines, and with individuals.

Defects in organization and methods.

359. **Defects of the Postal System.** — It cannot be said that our post-office is a well-conducted business. Even though there is no desire on the part of the government to make profit out of the department, there does not seem sufficient reason for many unfortunate customs. The selection of postmasters, without special regard to preparation for their duties, and the frequent changes necessary, are in themselves costly. The expenditures for the transportation and delivery of second-class mail matter is several times as much as the revenue obtained from this source, this enormous loss being justified on the grounds that periodical advertising brings the post-office much of its business and that the periodicals thus carried educate the people. Another practice liable to abuse arises from the privilege given congressmen and others of sending out government publications free of postal charges. Another serious defect is caused by the frequent payment to different organizations of sums larger than those required of express companies for similar ser-

Harrison, 242–250.

Bliss (ed.), *New Encyc. of Social Reform*, 930–933.

Cunniff, M. G., in *World's Work*, 7 (1903–4), 4074–4085, 4245–4250, 4589–4594.

Joint Postal Commission, *Prel. Report*, 1908.

vices. Large losses are entailed in the delivery of mail in rural districts. Many believe that by the adoption of simple economies, and the introduction of a parcels post, the post-office can be placed on a paying basis, without greatly modifying present rates. Whether a parcels post would reduce the postal deficit or not, the government cannot postpone much longer this much-needed reform, which is used by all other postal systems, including even those of the second and third class.

Many important duties.

Harrison, 268–270.

Gauss, *Am. Gov't*, 153–158.

360. The Secretary of the Interior. — The duties of the Secretary of the Interior are of the most varied character. His department is broken up into bureaus that have duties in no way related to each other, but of the greatest importance in themselves. They deal with public lands, irrigation, pensions, Indian affairs, patents, education, railways, and other domestic affairs. As ex-President Harrison says, "The Secretary must pass finally in the department upon questions of patent law, pension law, land law, mining law, the construction of Indian treaties, and many other questions calling for legal knowledge, if the judgment of the Secretary is to be of any value." He has been called upon to decide questions involving millions of dollars, and to assist him in this legal work has special assistant attorneys-general.

Educational grants and homestead acts.

Harrison, 269–279.

Willoughby, *Citizenship*, 225–229.

Ashley, *Am. Gov't*, revised ed., §§ 275–279.

Bullock (ed.), *Readings in Pub. Finance*, 64–72.

361. Our Land Policy. — The public lands of the United States were intended at first to be a profitable investment. Extensive surveys were made, the land being laid out in townships six miles square, each of which was composed of thirty-six sections. Sales were made, except of the two sections in each township reserved for schools or other purposes. During the sixties general grants of our lands for the aid of state agricultural schools were made. Since 1862 agricultural lands have been acquired by settlers under the Homestead Act (§ 637). Mineral lands are sold at low rates in small lots (§ 646), and all coal lands are now graded according to value (§ 654), but in the past mineral, agricultural, and timber lands have been offered at ridiculously low rates, and some were acquired fraudulently in addition. Reclaimed

lands, now watered from great government irrigating dams, are sold in small blocks to actual settlers (§ 638). The best timber lands are now in government reserves (§ 640). Lands controlling water power sites are no longer offered for sale at low rates, as was formerly the case (§ 642).

Nelson, K., in *A. A. A.*, 33 (1909), 611–619.

362. Pensions. — While this Pension Bureau does nothing more than apply the laws of Congress, the subject itself deserves notice. It is only during recent years that our pension list has grown very large. The policy for twenty-five years after the War for the Union was to grant pensions to those alone who were injured in actual service. The law of 1890 makes it practically possible for any one who was in the Union army, for even a brief period during the war, to secure a pension, provided he is now disabled, while the law of 1907 added to the pension list all soldiers or sailors over sixty-two years of age. There can be no doubt of the duty which our government owes to those whose sacrifices brought great suffering upon themselves or their relatives; but the wisdom of our present liberal legislation has been seriously questioned by some men whose patriotism is above reproach.

Liberal pension policy.

Harrison, 285–286.

Casselman, A. B., in *Century*, XXIV (1893), 135–140.

Glasson, W. D., in *A. A. A.*, 19 (1902), 204–226.

Hale, W. B., in *World's Work*, Vols. 20 and 21 (1910–1911).

363. Indian Affairs. — The care and development of the Indian is one of the duties we owe civilization. Our own growth demanded that we should occupy the lands that were his, but the act of dispossession laid upon us a duty to protect and educate him. At first it was our custom to make with the tribes treaties that were systematically broken. Since 1871 the treaty system has been abandoned, the Indians have been treated as wards of the nation, more careful attention being given to Indian affairs. The problems of education and civilization have been dealt with in an honest spirit, and an attempt is being made to solve them by breaking up the reservations, making the Indian a citizen, giving him land of his own, and training him to some suitable line of work.[1]

Policy before and since 1871.

Harrison, 280–284.

Fairlie, *National Administration*, 197–204.

Leupp, *Indian and his Problem*, 33–114.

[1] On the Dawes Act, in force from 1887 to 1906, and the Burke Act, the 1906 amended Indian law, consult Leupp, *The Indian and his Problem*, 34–41, 61–78.

Patents.

Gauss, *Am. Gov't*, 718–725.

364. Patents and Copyrights. — The great material progress we have made during this century is no doubt partially due to the patent rights given by the government. Any person may obtain for the period of seventeen years the exclusive right to make articles similar to his invention, provided the device is not already protected by patent.

Copyrights.

Gauss, 122–127.

Copyrights were formerly issued by the department of the interior, but are now given by the librarian of Congress. Sole right to publication is given for twenty-eight years, with liberty of extension for twenty-eight years longer.

Reclamation service and others.

Gauss, *Am. Gov't*, 713–733.

Davis, A. P., in *A. A. A.*, 31 (1908), 203–218.

365. Other Bureaus of the Interior Department. — As all matters pertaining to education are left with the states, the Commissioner of *Education* confines his labors to the gathering of statistical information, the making of reports and suggestions. The *Geological Survey* investigates and reports upon our natural resources, especially the valuable coal deposits on public lands. A Bureau of *Mines* has supervision of all matters relative to mining that come under the national government, giving especial attention to the study of means for securing greater safety in mines. The *Reclamation Service* has charge of the construction of immense reservoirs which are used in irrigating great valleys of the West. The Commissioner of *Railroads* looks after all the interests of the government connected with railways, especially those of the Pacific railways.

Bureaus of the Treasury Department.

Harrison, 202–220.

Adams, *Science of Finance*, 194–201.

Congressional Directory, under Treasury Department.

366. The Treasury Department. — No one of the departments has exerted a more potent influence upon our history than the Treasury. The means by which it affects the political and business world are indicated in the chapter on Money, so that an outline will suffice here. The Secretary of the Treasury is instructed to make plans for the management of the revenue, to look after its collection, and supervise all fiscal operations of the government. He is assisted by three Assistant Secretaries, several Auditors for the different executive departments, the Treasurer, who has charge of the receipt and disbursement of money, a Controller of the Treasury, who supervises all accounts that are in dispute,

a Controller of the Currency, who oversees all national banks (§ 602), the Director of the Mint, who has charge of all coinage (§ 604), the Superintendent of the Bureau of Engraving and Printing, the Commissioner of Internal Revenue, who oversees the collection of revenue from that source (§§ 581–585), besides several others, some of whom have little to do with finance.

(For influence of department, see §§ 146–149, 396, 598–603.)

367. **The War Department.** — Although not often an army officer, the Secretary of War is the real commander of the army, supervising its organization, equipment, and movements. His action is, of course, subject to the approval of the President as commander-in-chief. He is assisted by the General Staff, which oversees the administration of military affairs, and seeks to obtain coöperation between the army and different bureaus of the department. There is a Quartermaster-general, who buys most of the army supplies, except the food, which is under the charge of the Commissary-general, and the ordnance, which is left to the Chief of Ordnance. The two principal cares of the department are the army and the coast defence, for both of which appropriations have been largely increased since the war with Spain. Among recent achievements of the department have been the sanitary work accomplished in Havana and in the Canal Zone, and, most important of all, the greatest engineering feat of modern times, the construction of the Panama canal. The training of officers for the army is conducted at West Point Military Academy, the appointment of cadets being, in practice, made by the different senators and representatives, and by the President.

The Secretary and his assistants.

Harrison, 221–230.

Carter, W. H., in *Scribner's*, 33 (1903), 661–673.

368. **The Navy Department.** — During the last twenty years interest has greatly revived in naval affairs. The lessons of the war with Spain show to all thoughtful persons the supreme necessity for a country situated as ours is of a large and well-managed navy. The Secretary has several aides who seek to secure, for the Navy Department, the efficient coöperation of the different bureaus which the General Staff has secured for the War Department, leaving more power,

Present importance of the Department.

Harrison, 251–267.

Mahan, A. T., in *Scribner's*, 33 (1903), 567–577.

however, in the hands of the Secretary. The Secretary of the Navy bears practically the same relation to the President and to his subordinates as does the Secretary of War.

The Attorney-general and his assistants.

Harrison. 230–232.

Fairlie, *National Administration*, 165–175.

369. The Department of Justice. — The United States has always had an Attorney-general to advise the President and members of the Cabinet, and to conduct suits in the higher courts; but it was not till 1871 that the Department of Justice was organized. It consists of a Solicitor-general, four Assistant Attorney-generals, and several Attorneys, who relieve the Secretary of the great bulk of legal investigation and pleading. Had the Supreme Court been willing to advise Washington, when he asked their opinion on several questions of foreign and domestic policy (1793), the Attorney-general's duties would undoubtedly have been less important. As prosecuting officers the assistants of the Secretary and District Attorneys assigned to the District Courts have an important work in bringing offenders to justice.

General.

Ashley, *Am. Gov't* (revised), §§ 284–289.

370. The Department of Agriculture. — The Secretary of Agriculture did not become a member of the Cabinet until 1889, and the marvellous development of the work in this department has taken place since the close of the nineteenth century. The Department maintains different bureaus to study the farmer's needs and aid him in his work. It coöperates with state universities, to each of which the national government grants $50,000 per year, in addition to $30,000 for each experiment station operated by a university.

Forest service and the weather bureau.

Gauss, *Am. Gov't*, 751, 757–764.

Not only are our forests being preserved by the reservation of nearly 200,000,000 acres of forest lands (§ 643), but the *Forest Service* has interested people in the protection, growth, and value of forests, not only for the sake of the trees, but for their inestimable value on watersheds in preventing alternating floods and droughts (§ 645). The *Weather Bureau*, by sending out reports from its two hundred stations, warns of frosts or storms, thereby saving large sums to growers or shippers.

371. Other Bureaus in the Department of Agriculture. — The Bureau of *Soils* investigates the character, value, and usability of different soils in the United States, suggesting the best methods of securing good results and the most profitable crops (§ 651). That of *Plant Industry* experiments with seeds and varieties of plants, sending seeds and information to the farmers. The breeding or importation by government experts of better varieties of corn, wheat, and other staple cereals will mean a gain of several billion dollars a year, without additional cost of cultivation, as the government helps the farmers to select the types that are best suited to their needs. Immense sums have been saved by officials of the bureaus of *Entomology* and *Animal Industry* in preventing the importation or spread of virulent diseases of plants or animals. American markets are extended by the careful examination of all meat products intended for export. American consumers are protected by the supervision of the *National Pure Food Law* of 1906.

Different plant and animal bureaus.

Gauss, *Am. Gov't*, 745–757.

Poe, C. H., in *World's Work*, 9 (1905) 5955–5964.

372. The Department of Commerce is composed of a large number of bureaus formerly connected with other departments, especially the Treasury.[1] The Bureau of *Labor* gathers information from all parts of the country on the hours of labor, the wages paid in different lines of employment, and the general labor conditions in various sections. Corporations which do interstate business are investigated by the Bureau of *Corporations*, which has the right to publish any information obtained. The aim of the Bureau of *Manufactures* is to aid American manufacturing industries, especially through the development of foreign and domestic markets, by gathering and publishing information, and "by such other methods and means as may be prescribed by the Secretary, or provided by law."

Bureaus of Labor, Corporations, and Manufactures.

Fairlie, *National Administration*, 230–247.

Reinsch (ed.), *Readings on Am. Fed. Gov't*, 529–538.

The chief tasks of the *Census* Bureau consists in gather-

Census and innumerable bureaus.

[1] Among other duties, the heads of these bureaus have charge of the lighthouses and life-saving stations, the survey and inspection of the coasts, the development of a supply of fish (§ 651) and the publication of statistics, in the form of consular reports and statistical abstracts.

Merriam, W. R., in *No. Am. Rev.*, 170 (1900), 99–108.

Gauss, *Am. Gov't*, 782–807.

ing, compiling, and publishing every ten years, and, in some instances every five years, statistics upon population, agriculture, vital statistics, and manufactures. This work must be completed within two years. The remaining eight years are devoted to collecting information on special classes, taxation, transportation, and other subjects. By the *Immigration* Bureau are enforced the laws for the exclusion of Chinese laborers, idiots, paupers, and persons with contagious diseases or under contract to work in competition with American labor.

Non-departmental bureaus.

Gauss, *Am. Gov't*, 813–827.

373. **Other Commissions.** — In addition to these nine departments, there are commissions which are not connected with any department. These are the *Interstate Commerce Commission* (§ 613), the non-partisan *Civil Service Commission* of three members (§ 345), the *Smithsonian Institution* for scientific investigations, the *International Bureau of American Republics* to promote commerce and friendship throughout the western hemisphere, the *Congressional Library*, the largest collection in the new world, and the *Public Printing Office*, perhaps, with its five thousand employees, the most extensive publishing plant in existence.

QUESTIONS AND REFERENCES

The Department of State (§§ 352–356)

i. When was each department created? Who is now in charge of each? Give some account of the public services of the present secretaries.

ii. Name the ambassadors of the United States to the chief powers, and of those powers to the United States. Which of these men have won distinction, and for what? How does their compensation compare?

iii. What does it signify when passports are given to a minister? When they are demanded? How would you get a passport if you wished to travel in Europe? Of what value would it be?

Post-office and Interior Departments (§§ 357–365)

1. Why should not the telegraph, interstate telephone lines, and

the railways be managed by the government? Give advantages and disadvantages of government control of the telegraph.

2. State in detail what is being done for the civilization of the Indian.

3. Give an account of the relations of the United States government to the Pacific railways from 1860 to the present.

i. Do you live on land surveyed according to the "rectangular" system? If so, where are the nearest base line and prime meridian?

ii. What is the smallest monthly sum given to any veteran by the government in the form of a pension? How many pensioners are on the list at present? What sum was appropriated for them last year?

iii. Look up the steps in obtaining a patent or copyright.

Other Departments (§§ 366–373)

a. Consult, on the naval needs of the United States, Melville, G. W., and others in *A. A. A.*, 26 (1905), 123–245, 163–169; Roosevelt, T., in *Strenuous Life*, 167–185; and Mahan, *Interest of America in Sea Power*.

b. Compare our departments as departments and heads as a Cabinet with those of Europe. Wilson, *The State*, 419–430, 436–439 (Fr.), 543–556 (Ger.), 858–889 (Eng.); and Goodnow, *Comparative Administrative Law*, I, 102–161 (all).

c. On the coöperation between the Department of Agriculture and the agricultural colleges and experiment stations, read Harwood, W. S., in *Scribner's*, 31 (1902), 643–660; Corbin, *Which College for Boy*, 211–241; Carleton, *Industrial Evolution*, 206–222; U. S. Agricultural Dep't, *Yearbook*, (1902) 589–606, (1905) 167–182, 407–422; Nat. Educational Assn., *Report* (1908), 297–312; Powell, E. P., in *Independent*, 66 (1909), 797–802.

1. Which executive departments and commissions enforce or administer the laws? Which are restricted to making reports and recommendations on subjects over which Congress has no jurisdiction?

CHAPTER XVI

THE JUDICIAL DEPARTMENT

General References

Hinsdale, *American Government*, 292–322.
Bryce, *American Commonwealth* (abd. ed.), 167–200.
Harrison, *This Country of Ours*, 300–330.
Burgess, *Political Science*, II, 320–337.
Cooley, *Principles of Constitutional Law*, 111–148.
Story, *Commentaries*, chaps. IV, V, XXXVIII.
Cooley *et al.*, *Constitutional History as seen in Constitutional Law.*
Willoughby, *The Supreme Court.*
Coxe, *Judicial Powers and Unconstitutional Legislation.*
The Federalist, Nos. LXXVIII–LXXXIII.
Meigs, *Growth of the Constitution*, 234–254.
Lalor's *Cyclopedia*, article, "Judiciary."
British and American Encyclopedia of Law, article, "United States Courts."

Final interpreter of a written constitution in a federal state.

Bryce, 260–262.

Story, *Commentaries*, §§ 373–396.

Cooley, *Const'l Hist.*, 30–43.

374. The Position of the National Courts in our Constitutional System. — Our national judiciary has enjoyed an experience unique in the history of judicial institutions. This has been in no wise due to a peculiar organization or unusual methods, but solely to the character of the Federal State in which we live and to the limitations of a written constitution. In organizing our present system of government, a line was drawn between the sphere of the nation and the sphere of the states, and the powers to be exercised by the United States were delegated in general terms and enumerated in the Constitution. Because the exact character of these powers was not specified, it became a matter of the first importance to decide who should be the final interpreter of what powers had been given and what

ones withheld. The convention of 1787 was unwilling to have the United States government dependent upon the states for the exercise of any of its powers, because of the experience which Congress had had under the Confederation. Much less were they willing to give the states the right to decide what the provisions of the Constitution meant, as that would enable the states to restrict the powers of the central government at will, and thus place Congress again at their mercy. Accordingly, the convention felt it necessary to make the United States government the interpreter of its own powers, and to the Supreme Court was given the right to decide what the Constitution meant. The anti-Federalists protested vigorously against such a usurpation of authority by the central government, as it left no sufficient guarantee that the states would be allowed to use all the powers reserved to them. These protests found embodiment in the tenth amendment, which declared that all powers not delegated to the United States or denied the states were reserved to the states or the people thereof. But this did not affect the position of the Supreme Court as the final interpreter of the Constitution.

When and how the power is used.

Bryce, 178–181, 183–187.

Hinsdale, §§ 570–577.

375. **Declaring Laws Unconstitutional.** — In *The Federalist* (No. LXXXI) Hamilton has shown that where a less important law conflicts with a more important one, the former is set aside as invalid. As the Constitution is the fundamental law of the land, and as laws of Congress have less authority in case of supposed conflict, the courts must decide whether the two are incompatible, and, if so, declare the law of Congress null and void. In the same way, since the Constitution, the laws of Congress and treaties are the supreme law of the land, when a state law is in opposition to a national law, the court must first decide whether Congress had a right to pass its law, and if it had, the state law is declared unconstitutional. But the courts wield this immense power purely and simply as courts, *i.e.* they do not pass judgment on any laws at the time those are enacted, but wait till some one is aggrieved in the execution of the

law and brings suit in order to protect alleged rights. The courts do no more than decide whether the law does contravene the Constitution, and if, in their opinion, it does, they bring in a verdict for the plaintiff. But as they have declared the law unconstitutional in this one case, it has become the custom for the other departments of government and for the people to consider the law of no effect, as though it had never existed. Then, if the decision of the court is unfavorable to the highest tribunal of the land, *i.e.* the people, in time the ruling of the court will be set aside and a law similar to the first one will be considered constitutional.

Before 1790.

Bundy, *Separation of Gov't Powers*, 52–62.

376. Historical Use of the Power to set aside Laws. — In no other country has the judiciary ever been allowed to override the wishes of the legislative body by declaring a law null and void. Consequently, no other national courts can compare with ours in prestige or power. But the idea of setting aside a law did not originate with our Supreme Court. In colonial times we have the germ of the idea in the right exercised by the "Lords of Trade" to declare null and void a law of a colony which they thought was contrary either to the charter of the colony or to the laws of England. No less than three times between 1776 and 1787 did the state courts assert their right to decide whether a law was in opposition to the state constitution; and in the well-known case of *Trevett* v. *Weeden* (1786) the Rhode Island judges not only declared a law unconstitutional, but sought, though unsuccessfully, to enforce their decision.

Since 1790.

Johnston, in Lalor, II, 647–652.

Elliott, C. B., in *P. S. Q.*, V (1890), 224–258.

Cf. §§ 145, 168, 221, 404.

The Supreme Court did not hesitate to exercise this power early in its career; but as most of the cases were of minor importance, comparatively little attention was paid to them, even though the strict constructionists were of one mind that the courts were exceeding their powers. The Virginia and Kentucky resolutions of 1798 and 1799, claiming the right of three-fourths of the states to declare a law of Congress unconstitutional, stirred up popular interest in the question, and made it necessary for the courts to prove

beyond all question that they had this right to set aside laws. In this consists the significance of Chief Justice Marshall's reasoning in *Marbury* v. *Madison* (1803), (§ 145). From that time no large proportion of the people has denied to the Supreme Court the position of final interpreter of the Constitution. But it yet remained to assert the supremacy of national over state laws through judicial decisions, and this was done repeatedly between 1810 and 1830. There have been, of course, objectors in the states and in the other national departments; but it is now universally admitted that the Supreme Court decisions bind all other government officials and all citizens so far as they apply to civil rights and legal remedies, and not to political policies; unless they are overruled by the people.

Cooley, *Const'l Law*, 151–162.

Story, *Commentaries*, §§ 399–456.

377. Some Rules of Judicial Interpretation. — In deciding whether a law is adverse to the Constitution, the courts are accustomed to observe certain rules and customs. Among these may be mentioned: (1) No important case involving the Constitution is considered except by a full court. (2) No law is declared unconstitutional unless it is clearly in opposition to the Constitution. (3) To find the meaning of a particular clause, the meaning of the Constitution as a whole is usually taken into consideration. (4) Laws which violate general principles of liberty are not on that account declared null and void. (5) Statutes may be held to be unconstitutional in part, the validity of the remainder being affirmed.

Judiciary Acts of 1789 and 1891.

Hinsdale, §§ 526–529, 538–546.

378. The System of Courts. — The Constitution provides that there shall be a Supreme Court and such inferior courts as Congress may think it best to establish. In the Judiciary Act of 1789 arrangements were made for districts corresponding to a state or a portion of a state, and circuits composed of several districts. Judges were appointed for the Supreme Court and the district courts, but no special circuit judgeships were created. The jurisdiction of each set of courts was defined, and the cases that could be appealed from the lower courts, or state courts, were enumer-

ated. This system, with necessary changes, lasted for one hundred years, till the Act of 1891 created the Circuit Court of Appeals, in order to relieve the Supreme Court of a large number of the cases formerly appealed to it. We have now (1910) the lowest courts for seventy-nine state and five territorial districts, twenty-nine judges for the nine circuit courts, nine Circuit Courts of Appeals, and finally the Supreme Court. Outside of this system there are a national Court of Claims, a Customs Court of Appeals, and a Court of Commerce, besides the courts of the territories.

Life tenure.

Hinsdale, §§ 530, 531.

379. **Term and Appointment of Judges.** — The term of all United States judges is for good behavior. They are appointed by the President, and must be confirmed by the Senate before taking office. They hold, practically, life positions, as impeachment is the only method of removal, and this is too cumbersome for ordinary use. They may retire at the age of seventy, provided they have served at least ten years, and continue to draw full pay. The salaries at the present time are $6000 a year for district judges, $7000 for circuit and appeal judges, and $12,500 for Supreme Court justices, with $13,000 for the chief justice. These salaries may be increased, but cannot be diminished during the term of office. Life tenure of the judges violates one of the fundamental principles of democracy, but it has undoubtedly given us courts of higher character than would otherwise have been possible. The judges have been men that have ranked high in the legal profession, and the permanency of tenure has led to fewer shiftings of position than would have been the case with short terms. Even when men who are pronounced politicians have been selected for the bench, they have, almost without exception, subordinated partisanship to a love of justice.

Classes of cases.

Burgess, *Pol. Science*, II, 325–328.

380. **Jurisdiction of the National Courts.** — The Constitution provides for the different kinds of cases that may be tried in United States courts. These include all cases that could not be properly decided by state tribunals. They

may be arranged in two great classes: (1) Those depending on the nature of the suit itself; (2) those depending on the character of the parties to the suit. Under class one come "all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made or which shall be made under their authority," and "all cases of admiralty or maritime jurisdiction." Under the second class are: (1) "all cases affecting ambassadors, other public ministers and consuls;" (2) "to controversies to which the United States shall be a party; [3] to controversies between two or more states, between a state and citizens of another state," but no state shall be sued without its own consent; (4) "between citizens of different states, between citizens of the same state claiming land under grants of different states; and [5] between a state or the citizens thereof and foreign states, citizens, or subjects."

Cooley, *Const'l Law*, 112–127.

381. Methods and Jurisdiction; Historical. — The plan proposed by Virginia to the constitutional convention made the highest national court an advisory body for the executive; but, before the sessions closed, the courts were limited to judicial matters tried according to judicial methods. Nevertheless, the judges were given several opportunities to perform many non-judicial duties. In 1791 the judges of the circuit court were asked to investigate and decide the claims of certain persons for pensions. All of the judges agreed that they had no judicial power to do this, and while some were willing to undertake the task as commissioners, so strong was the feeling of the judiciary against such a course that other provisions were made for the consideration of the claims. Not long after (1793) Washington sent to the Supreme Court a list of subjects upon which he asked the court to express opinions. They were at once returned as being outside the jurisdiction of that body. But the court has been just as conservative in deciding cases brought before it as in thus delimiting its field of activity. When the case has involved points dealing with the policies of either the executive or legislative

All non-judicial duties avoided by the courts.

Harrison, *This Country of Ours*, 303–313.

departments, the courts have always refused to consider it or to interfere in any way with political questions. *E.g.* Congress and not the court decide when insurrections exist. Congress uses its own discretion in performing its duties, provided it does not exceed its constitutional powers. The judiciary has therefore confined itself to legal matters and cases involving individual rights. In addition, it has refused to allow Congress to enlarge the original jurisdiction of the Supreme Court or the jurisdiction of the national judiciary as a whole; it has permitted state courts to exercise extensive concurrent jurisdiction with the United States courts, and has in every way acted with discretion and judgment.

Concurrent jurisdiction. Cases that may be appealed.

Cooley, *Const'l Law*, 127–133.

Cooley, *Const'l Limitations*, 18–23.

382. **Relation to State Courts.** — In general the United States or the state courts have exclusive jurisdiction over certain classes of cases, but there may be instances of concurrent jurisdiction. For example, a case coming under the postal laws or under a state law supposed to involve the United States Constitution may be tried in either a state or a United States court, as the plaintiff prefers. In such cases the final decision rests with the national court. When, in a case arising under a state law, the state court decides that the law is repugnant to the United States Constitution, it is not appealed to the United States courts; but if the state court decides that it is not repugnant to the national Constitution, the case must be carried to the Supreme Court of the United States. Again, when a state court decides in favor of any "right, title, authority, privilege, protection, or exemption" granted by the United States government, the decision is final, but the case may be appealed to the Supreme Court if the decision is adverse. In cases tried by the national courts which involve points of state or of the common law, the attempt has been made to follow the rulings of the highest state tribunals; but this has been only partially successful, as the national courts have felt it more necessary to be consistent with each other than with state courts.

383. The Supreme Court; Organization. — The Supreme Court consists of one chief justice and eight associate justices, appointed by the President for life. The court holds its regular session in Washington, beginning in October, and the presence of six justices is necessary before a decision is rendered. These decisions are written by the different judges to whom particular cases are assigned by the chief justice after discussion by the different members of the court. The opinion is then read in the presence of the others, a vote is taken, and, if accepted by the majority, it becomes the decision of the court. Dissenting opinions are often given by the minority in suits involving important principles.

Compositions, sessions, and decisions.

Harrison, *ibid.*, 314–320.

Each justice of the Supreme Court is also assigned to a particular circuit, in which he is obliged by law to hold court at least once in two years. He is likely to be called upon for service in the Circuit Court of Appeals in his circuit, so his position is no sinecure.

Circuit Court duties.

Until 1807 the court had but five associate justices. From 1807 to 1837 the number was six; after 1837, eight. In 1863 it was increased to nine; but in 1866, in order to prevent President Johnson from making appointments, it was practically reduced to six. Since 1869 there have been eight associates of the chief justice.

Number (1789–1900).

In 1911 the court was composed as follows: —

	Circuit	Appointed
Chief Justice Edward D. White (La.)	Fourth	1910
Associate Justice John M. Harlan (Ky.)	Sixth	1877
Associate Justice Joseph McKenna (Cal.) . . .	Ninth	1898
Associate Justice Oliver W. Holmes (Mass.) . .	First	1902
Associate Justice William R. Day (Ohio) . . .	Seventh	1903
Associate Justice Horace H. Lurton (Tenn.) .	Third	1910
Associate Justice Charles E. Hughes (N. Y.) .	Second	1910
Associate Justice Willis Van Devanter (Wyo.) .	Eighth	1910
Associate Justice Joseph R. Lamar (Ga.) . . .	Fifth	1910

384. Jurisdiction. — The jurisdiction of the Supreme Court is of two kinds, — original and appellate. Those

Original and appellate jurisdiction.

Brit. and Amer. Encyc. of Law, XXVII, 638–644.

kinds of cases that shall be tried first in this court are specified in the Constitution; but the court itself has decided that as this jurisdiction is not exclusive, Congress may permit other courts to exercise it. The cases are those "affecting ambassadors, other public ministers, and consuls, and those in which a state shall be a party." The appellate jurisdiction of the court may extend to all other cases, but to do this would lead to a needless increase of its business. Cases which are now appealed may be divided into three classes, according to the courts from which appealed: (1) Cases from either the district or circuit courts are those in which the jurisdiction of the court is in question, final sentences or decrees in prize causes, cases of conviction for capital crimes, those involving the Constitution of the United States or constitutionality of any law, and cases where a state law is said to be in contravention of the United States Constitution. (2) The decisions of the Circuit Court of Appeals may be reviewed where the case involves $1000 — except cases between citizens of different states or a citizen and an alien, cases under patent revenue and criminal laws, and cases in admiralty. (3) All cases tried in state courts which may be appealed, as we have just seen (§ 382), are carried directly to the Supreme Court.

Organization and jurisdiction.

B. and A. Encyc. of Law, XXVII, 645–649.

385. **Circuit Court of Appeals.** — The Act of 1891 created this court for the purpose of relieving the Supreme Court of most of its appellate business. There are as many courts as there are circuits, that is, nine, and each is composed of three persons, the Supreme Court justice of that circuit and two of the regular circuit judges, or possibly district judges. Any two of these may hold court at any time, but the places are designated by law. All cases appealed from the district or circuit courts, and not taken directly to the Supreme Court, are reviewed in this court. The decision of the court is final in some of these cases, as in those involving criminal, admiralty, revenue, and patent law, but in all others the case may be carried to the Supreme Court, either by appeal or on writ of error.

There has already been some complaint that different suits involving similar principles, which cannot be carried higher, may be decided in one way by one Circuit Court of Appeals and in another way by another, so that what is legal in one circuit is illegal in a second. To remedy this difficulty a single court has been suggested to which appeal may be taken in such cases. A defect.

386. **Circuit Courts.** — For each of the nine circuits either two, three, or four circuit judges are appointed who may hold court separately or together. Before 1891 the court possessed both original and appellate jurisdiction, but, by the judiciary law of that year, when the whole system was reorganized, only original jurisdiction was left. It may be said that all cases involving $2000 or more, coming under any one of the classes specified in Article III, Section 2, cl. 1, of the Constitution are tried in this court, but may be appealed to one or the other of the higher courts. Composition, Original jurisdiction.

B. and A. Encyc. of Law, XXVII, 649–659.

387. **District Courts.** — There are now eighty-four districts in the United States, five of which are in the territories; and there are for the state districts eighty-nine district judges, as several districts have more than one judge. To each district is also assigned a district attorney, who represents the United States in all suits arising in the United States courts held in his district, and a marshal, who executes the decision of the court and who may call out a posse or ask aid from the President in the performance of his duties. The jurisdiction of the court is original, and covers a multitude of cases from those of minor importance to the final decision of prize causes. District judges and officers.

B. and A. Encyc. of Law, XXVII, 659–664.

388. **Other National Courts.** — The Court of Claims, composed of five judges, decides the amount due any person who has a money claim against the national government. The Customs Court of Appeals, with five judges, created in 1909, has final jurisdiction of controversies involving customs duties. The Court of Commerce, consisting of five circuit judges assigned for a term of five years, has jurisdiction of appeals from the Interstate Commerce Commission. Courts of Claims, Customs, and Commerce.

B. and A. Encyc. of Law, XXVII, 664–681.

QUESTIONS AND REFERENCES

The Position of the Courts (§§ 374–377)

a. On courts, consult Burgess, *Comparative Constitutional Law*, II, 320–337 (U. S.), 338–346 (Eng.), 347–351 (Ger.), 352–355 (Fr.) 356–366 (all).

1. How do our courts compare with those of England, France, and Germany in organization, methods, and jurisdiction ?

2. If the Supreme Court can set aside a law of Congress, is not the court above Congress ? Which has the greater positive power ? the greater negative power ?

i. Look up in Thayer's *Cases in Constitutional Law* the decisions on some of the important laws declared unconstitutional. Were any of the decisions unanimous? Which ones were decided by a bare majority?

ii. Name a recent case in which a law of Congress was held invalid. On what grounds ? By what members of the court ?

The Courts as a Whole (§§ 378–382)

1. In what respects may our system of courts be altered without a constitutional amendment ? Is the number of Supreme Court justices dependent on statute or constitutional law ?

2. Why would a ten or fifteen year term be undesirable ?

3. Why does not the eleventh amendment prohibit citizens from suing their own state ?

The Supreme and Inferior Courts (§§ 383–388)

a. See Congressional Directory for biographies of Supreme Court justices and some other facts. For fuller lists of judges, attorneys, marshals, etc., consult Political Almanacs.

i. Name the most important chief justices we have had. Who is Supreme Court justice for your circuit ? Who are the other judges holding court in that circuit ?

ii. What are the limits of your district ? Where is the court held ? Give the names of the district judge, the district attorney, the marshal. How do the judges (U. S.) of your locality compare in ability with the state judges ?

iii. What Supreme Court justices are Democrats ? which ones are Republicans ? By whom was each appointed ? What experience did each have in the territory over which he now holds circuit court ?

CHAPTER XVII

THE RELATIONS OF THE DEPARTMENTS

General References

Bryce, *The American Commonwealth* (abd. ed.), 155–167, 192–200.
Wilson, *Congressional Government.*
McConachie, *Congressional Committees*, 211–258. Shows how the committees form bonds between the departments.
Cooley, *Constitutional Law.*
Bundy, *The Separation of Governmental Powers.* The most complete study of the subject; includes the state governments.
Bagehot, *The English Constitution.* A brilliant and forceful presentation of its actual workings, chap. II especially valuable.
Davis, H., on "General Relations," in *J. H. U. S.*, III, 482–523.
Mason, *The Veto Power.* Vetoes treating relations of the departments.
Goodnow, "The Executive and the Courts" (*P. S. Q.*, I, 533–559). Judicial remedies for administrative actions which restrict individual liberty.
Elliot, "The Legislature and the Courts" (*P. S. Q.*, V).
Willoughby, *The Supreme Court.* Relations to Congress and the executive and influence on politics considered.
Coxe, *Judicial Powers and Unconstitutional Legislation.*
Lalor's *Cyclopedia*, article by Johnston on "Relation of President to Congress and Judiciary," and on "Veto."

Separate departments

389. The Two Demands upon a Governmental Organization. — For the proper performance of its duties, every modern government must fulfil at least two requirements. First, there must be a sufficiently complex organization to accomplish the many and varied tasks of governing. That is, there should be enough parts to the machinery of government so that but few duties are required of each part, these few duties being alike in character. However numerous

these parts may be, they may then be classified as belonging to the legislative, the executive, or the judicial branch of the government, so that at least certain of the parts, *i.e.* those belonging to the same branch, will work together.

Union of departments.

Second, these branches, or departments, must be more or less united in their action, or we have three central governments instead of one, and that is little better than no government at all.

Types based on relation of executive to legislature.

390. **Two Types of Government.** — It is the relation of the departments to each other which is of special interest in this chapter. We notice upon observation that there are in existence two types of government, which represent respectively close union of the departments and a fair degree of independence among them. Great Britain and the United States are usually selected as the best examples of these types. In the former the fusion of the legislative and executive departments is remarkably complete, for, though they are separate in form, they work almost as a single body, the judiciary being subordinated to them. In the United States, on the contrary, every effort has been made to prevent the coalescence of the departments, and, so far as possible, not only are the departments kept independent, but coördinate as well. As many political scientists of experience have preferred the English system to our own, and have, in some cases, gone so far as to favor an adoption of a modification of the cabinet or parliamentary form in this country, the character of each system with the advantages most apparent will be briefly considered.

Character of the cabinet system.

Dicey, *Law of the Const.*, 413-416.

Medley, *Eng. Const'l Hist.*, 110, 111.

391. **Cabinet Government.** — In England almost all real power is centred in the hands of a committee of Parliament, which has extraordinary control over legislation and complete charge of executing the laws. This committee is called the Cabinet. Its omnipotence is apparent rather than real, because it can use its power only so long as it reflects the wishes of the House of Commons. We have presented a curious paradox — the Cabinet is master so long as it is servant. Just as soon as it gets out of sym-

pathy with the lower house, custom compels it to resign, unless, by calling an election for a new house, the Cabinet can obtain a majority of the Commons.

Concentration of power and responsibility.

Dicey, 416.

Bagehot, *Eng. Const.*

392. **Advantages of the Cabinet System.** — Three principal advantages are claimed for parliamentary government. (1) It concentrates power. The government has but one policy: that of its leaders. No time is lost in friction between the different departments or the separate houses. Every part of the government works in perfect harmony with every other, showing the existence of a single source of authority. In a word, the government is efficient. (2) The Cabinet is responsible for the success or failure of the government's policy. To irresponsible power have been due many of the evils about which history has only too many tales to tell. For this reason men have feared the concentration of authority. But the experience of England for a century seems to show that under proper restraint, centralization of power may be an unmixed benefit. This responsibility is enforced by compelling a Cabinet to resign when the House lacks confidence in its leaders. If the Cabinet thinks it, and not the House, is supported by the people, an election is called, and the Cabinet stays or withdraws according to the verdict. By this means (3) the government responds quickly to public opinion, because individual members are constantly being chosen, so that the complexion of the House is quickly modified if the government becomes unpopular. There is nothing rigid about the system, so that it is not necessary to change governments any oftener than the people demand; and they must be changed if the governing class wishes, though not at once.

Reasons for success in England.

393. **Cabinet Government under English and American Conditions.** — Efficiency and adaptability to new needs are not equally desirable in the governments of all countries. England seems to have developed the forms of government which gives the best results for her, but this is due quite as much to certain political conditions as to her cabinet

system. The English are preëminently conservative, and the control of affairs of state is, and has been, in the hands of her most conservative men. There never has been in the British Isles anything like the practical application of government by the people that has taken place in America. An almost universal suffrage has not meant anything like a real democracy. All political matters are still under the control of a select set of men — men of education, culture, wealth, and ability — who have given England good government while maintaining class rule.

Dangers in the system in America.

We know perfectly well, from the experience of France and other nations, that cabinet government demands for its most successful operation conditions similar to those existing in England. Even Bagehot, among the ablest of the critics and admirers of the British Constitution, is perfectly frank in admitting that the efficiency of the Cabinet would be a serious defect under true government by the people, simply because under parliamentary government of the English types public opinion may be brought to bear, with tremendous force, upon the Parliament and the Ministry. Two dangers arise from this, apparently contradictory, really twin evils: (1) Governments that are too representative of the masses would wield a force uncontrolled so long as it exists, and would tend to degenerate into mob rule. (2) Change from one dictatorial government to another is rendered easy.

With conditions as they are on this side of the Atlantic, it seems best to accept the conclusion of Sir Edward Freeman that both England and the United States have the government best adapted to their requirements.

Historical and practical reasons for its existence in United States.

394. **Presidential Government.** — The reason for the marked separation of the departments in the United States, however, is historical rather than practical. That is, it is the outgrowth of the conditions of the 18th century more than the experience of this. The desire which existed in the infancy of our republic to keep the government from injuring the people caused statesmen to dread all concen-

tration of power and to prefer division of it, even though coöperation between the departments was less perfect and responsibility less easily fixed. They did not approve of uncertainty of tenure, even if that uncertainty meant that the administration kept in closer touch with the best feelings of the nation. They wished fixed terms of office, largely because reëlection gave opportunities to keep a check on public servants. This preference for a *safe* government therefore resulted in two things: (1) Partial independence of the legislative, executive, and judicial departments; and (2) terms of office for a fixed period, which could be diminished only by impeachment or expulsion, and increased by nothing except reëlection.

Cf. Bryce, 201–213 (disadvantages).

395. **Advantages of Checks and Balances in America.** — On account of the rigidity of the Constitution of 1787, due to the difficulties surrounding its amendment, the independence of the departments became one of the permanent principles of our government. Nor has the history of the nineteenth century produced a feeling that the separateness of the departments is a disadvantage. No system of government is without its defects, and the American people believe that a safe government is better than an efficient one. The checks and balances adopted to protect the people from the government have helped to protect the people from themselves. The greatest danger of a republic, "the tyranny of the majority," has been, to a large extent, avoided by these very means. Fixity of tenure and division of power have given us less government than we should have had with political institutions like England's, and have, no doubt, often resulted in delay and discord; but, on the whole, they have made it possible for democracy to work out its own salvation.

Increase in stability of government.

Federalist, No. XLVIII.

Some of the means by which the departments have been able to maintain their independence, and the ways in which they have influenced each other, are indicated in the following paragraphs. It is the intention to emphasize the actual working relations of the departments, rather than the

Means by which independence of departments has been maintained.

theoretical and constitutional checks and balances, and care should be taken to distinguish between powers ordinarily or actually used, and those which one department has over another, but which, for some reason, have lain dormant, and have therefore partially disappeared through disuse.

Very great power exercised by laws or through committees.

Bryce, 156–159.

Wilson, *Cong. Gov't*, 270–272, 277–279.

396. **Congressional Control over the Executive Departments.** — There has never been very great danger that Congress would become subservient to either the President or the courts, for it has constantly tended to encroach upon the sphere of these branches. The American practice of allowing the legislature to specify with great exactness the way a law shall be executed, has left to the executive little discretion, and has given Congress constant supervision over the execution and the administration of the laws. To oversee the work of the executive departments each house has created standing committees, that have charge of all matters arising in Congress which relate to the departments of State, the Treasury, etc. Among the duties belonging to these committees is that of organizing the departments, *i.e.* deciding how many and what bureaus and divisions they have, what work is assigned to each, the force required for the performance of the work, and many other details. Each year the departments ask for what money they need or desire, but obtain what the committees are willing, unless Congress overrules the committees and indorses the estimate of the departments. If a secretary wishes some reform in methods employed in his department, or believes he should be given enlarged power, there is no pressure he can bring to bear upon the committee except suggestions through the President's message, and personal appeal or silent and secret influences. In short, the secretary can do very little with Congress, and Congress may, in theory, do almost anything with him, may, in fact, abolish the department or any part of it. Drastic measures are of course quite uncommon; but if, as is usually the case, the secretary is better posted on the requirements of the depart-

ments, even the possibility of executive subordination is not desirable.

Discretionary power of the departments.

As often happens, the real power does not lie where we naturally expect. The departments are, it is true, greatly dependent upon the good will of Congress; but they, nevertheless, have a great deal of liberty in managing their own affairs, so that frequently Congress has less control than seems necessary. For example, take the Treasury during the last twenty-five years of the nineteenth century. Who gave it authority to lay aside $100,000,000 for a gold reserve? Who conferred upon it the right to discriminate between gold and silver in conducting the business of the government? Notice the ease with which a Secretary of the Treasury made use of an old law to issue bonds Congress begrudged, and we can but admit, after observing these facts and others like them, that at least one department has exercised its discretion in matters of moment.

Means of avoiding a veto.

Bryce, 158–160.

Johnston, in Lalor, III, 642–645.

397. **Congress and the President.** — Much of the President's power is derived directly from the Constitution and is, therefore, to quite an extent, beyond the reach of the most avaricious Congress. His right of participating in legislation through the veto can be overridden only by a two-thirds majority of each house and constant opposition to the administration. Congress is more likely to resort to subtle means. One of these that has played, and may again play, a by no means minor rôle is the rider. This consisted of attaching to an appropriation bill some measure distasteful to the President. As the President could not distinguish between the totally different portions of the new bill, he was obliged to veto all or let it pass. Since the appropriations were indispensable and might often affect his own work, the President usually signed his name to a bill containing a rider he disapproved, but the practice became so objectionable that it is now forbidden by the rules of the House.

Means of coercing President.

If Congress succeeds in making a law against the wishes of our chief executive and he ignores it, Congress is forced

Ford, *Amer. Politics*, 287–291.

to resort to other methods. It may gain its ends by new legislation. It may coerce the President by refusing to consider the bills he has most at heart, by blocking in every way anything he may attempt, or by withholding supplies or money for executive officials, or even the President. When Congress is really in earnest, none but the strongest or most obstinate executives have dared to thwart it, and, in consequence, more than one President has become the tool of Congress. If, however, the legislature fails, even by the use of such methods, it has still the right of impeachment, intrusted to its care by the constitutional convention in order to make a dictatorship impossible. But its practical value is almost *nil;* for the failure of the reconstruction Congress to win a victory in its warfare with President Johnson by the use of impeachment seems to have consigned that check to oblivion and make it little more than an historic memory.

Treaties and appointments.

Bryce, 78–81.

Harrison, *This Country of Ours*, 100–104, 107–110, 134–141.

398. **The Senate and the President.** — A more real menace to the independence and efficiency of the President exists in the negative which the Senate has upon his power of making treaties and appointments. That the Senate does not hesitate, even when on the best of terms with the President, to interfere with his actions for the purpose of preserving its own dignity is plainly shown in numerous cases, recent and remote. But where ill feeling exists between the upper house and the executive, the latter has been able to make no headway in his negotiations with other nations unless willing to do as the Senate wishes, and his appointees have been ignored or rejected with systematic regularity. As a matter of fact, the power of appointment belongs rather to the Senate, no matter how cordial may be its relations with the President, while its feelings on treaties must always be taken into account.

Influence and power of President over Congress.

399. **Executive Domination of Congress.** — Nevertheless, the working relations of the two departments are not one-sided. The periods of presidential weakness have been numerous and prolonged, but they have been due more to

the character of our chief magistrates than to any defect in the presidency itself. The way in which Jefferson, Jackson, and later Presidents have brought Congress to their own way of thinking in time of peace, is conclusive proof that a strong executive is not likely to submit to the domination of Congress. The veto is one of the most powerful means used to bring executive pressure to bear, and the few instances where the veto has been interposed in vain point a significant moral. The message means less than it once did, for in our early history it was carefully considered and discussed, often being the chief basis for proposed legislation. Yet both the annual and the special message may give a new turn to the work of the law-making body. This is especially true of the messages sent to special sessions convened at the wish of the President. Congress has been forced to consent to laws which were objectionable to the larger part of at least one chamber. The repeal of the Sherman Silver Act, in 1893, is a case in point. So long as the President alone can call Congress together in extraordinary session, he has an advantage over that body, positive and negative in its character: positive in that he can summon it to do what he wishes, though he cannot compel it to do what he asks; negative, because no matter how much Congress feels the need of a meeting, it can hold one if he is unwilling only by making concessions of some magnitude.

Johnston, in Lalor, II, 133, 134.

Ford, *Amer. Politics*, 279–289.

Burgess, *Pol. Science*, II, 252–257.

400. **The Independence of the Executive.** — Besides this direct influence over the action of the national legislature, the President possesses certain powers whose exercise is not easily limited by Congress, but which, nevertheless, affects Congress greatly. The two which are most potent for good or evil deal with the control of the army and the acquisition of territory. The army is created and organized by Congress for a period not exceeding two years. War can be declared by that body alone. Yet the President can do almost as he pleases with the military forces of the United States, and he may compel the Congress to

Almost unlimited military power.

Schouler, J. B., in *Forum*, XXIII, (1897), 70–74.

Cf. Baldwin, *Modern Pol. Institutions*, 80–116.

admit that war exists, as he did in 1846. In other words, the President may use the army in such a way that he really begins war, and Congress has no alternative but to indorse his action, or to risk loss of national prestige by an unseemly withdrawal from hostilities. We found ourselves in that predicament at least twice during the nineteenth century.

Power in annexations.

In acquiring and, to a certain extent, in controlling territory, the President is even less subject to the check of Congress. Enlargement of our domain has never been unpopular with our people, and even when two-thirds of the Senate have not personally favored the treaty by which purchase was made, they have not dared to reject it. Had the President possessed no initiative of this character, it is reasonably certain that our boundaries would be less extensive than they now are. Almost without exception this territory was at first under the absolute control of the President, and, in some cases, Congress has found it difficult or unwise to supplant the provisional government for a period of years.

Evidences and results of separateness.

McConachie, *Cong. Committees.*

Bryce, 201–213.

401. Coöperation between Congress and the Executive. — Evidently, then, the independence of the executive is in no immediate danger. But what about the bonds of union between the legislature and the President? Are these bonds of such a character that each department may work to advantage with the other, or are the departments constantly clashing in the performance of their ordinary duties? Their separateness might lead us to think that they hinder more than they help each other, but such is not the case. Although the work of each relates to the same laws, it deals with different phases of those laws, and neither one is in any real sense dependent on the other in performing the majority of the tasks assigned to it. There can be no doubt that in many cases much needed legislation has been prevented because the House, the Senate, or the President has objected, and no means could be found to whip the refractory member into line. It is also probable that

many of our laws are less perfect in form and content than they would be if each had been imposed by some one set of leaders, and had not been subjected to changes at every stage of its career as a bill. The great objection to the separation of the departments is, that there is no one body of men to whom the executive and the legislature are both responsible, and whose direction they follow; but, even if each of our departments places the emphasis upon different laws, they cannot greatly hinder one another, and their joint responsibility to the same constituency — the people of the United States — and their dependence upon public sentiment, insures a reasonable coöperation where that is indispensable.

Coöperation through political parties.

Ford, *Amer. Politics*, chap. XXVIII.

402. **The Effect of Political Parties upon the Departments.** — The working relations of the departments, particularly Congress and the executive, have been affected less by their theoretical independence of each other than by the fact that a single party controls all of them, or one party has a majority of one or both Houses of the legislature, while the other has chosen the President. There have grown up between the Congress and the executive branch numerous customs and methods which have enabled the government to bridge the chasm between these departments; but these customs can be used to the best advantage only when the two departments represent the same policy and believe in similar principles. If the President and the majority of the Senate and House are of the same political faith, the effect is immediately noticeable in the amount of important business transacted. But when one party dominates one-half of Congress and the opposition controls the other half, or when the President and Congress are at swords' points, not only does legislation suffer, but the administration of the law may be hampered by lack of proper understanding between the secretaries of the executive departments and the leaders of Congress. So vitally do the parties affect the success of our national government that many students of our institutions have sought to per-

fect the union of the departments through the agency of the political party.

Heads of departments in Congress (proposed).

Cf. references at end of chapter.

403. **Closer Union of the Departments.** — Some of these and others believe that we shall get better results in law-making and administration by allowing the members of our Cabinet to appear in either house of Congress, to address them on subjects relating to their departments, and even to introduce bills. Certainly some confusion may be avoided in this way, and the secretaries might have considerable influence in securing new and valuable laws. So far as the secretaries are concerned, there would be a gain in dignity, and possibly in power, over the present rather unsatisfactory method of appearing before committees. Yet we must remember that the real business of Congress is done in committee, and that, especially in the House, oratory carries little weight. The suggestions are well worth careful study, and if their adoption would raise the standard of legislation, as well as render administration more effective, the proposed plan would be doubly welcome.

Advantage of judicial independence.

404. **Influence of the Judiciary over Congress.** — Since our courts are the guardians of the Constitution and of individual rights, it is necessary that they should be as free as possible from political control and legislative interference. As they have expressly refused to consider cases that were political rather than legal (§ 381), the fear that they may constitute an unreasonable check on Congress is groundless; consequently the advantages of judicial independence are many, the disadvantages few.

Decisions involving laws.

Cooley, *Const'l Law*, 151–162.

Willoughby, *Supreme Court.*

So far as the courts can affect the other departments, their powers are negative rather than positive. Their decrees are, in effect, "Thou shalt nots" restraining from action legally or constitutionally wrong, yet at the same time producing a higher degree of public morality among the departments of government as well as among citizens, and often leading to increased activity of the central government. The wholesomeness of the influence exerted over Congress is observable in that list, but two hundred in all,

of cases involving laws that have been declared unconstitutional. The magnitude of the power wielded over the same body may be suggested by calling to mind but two; *Marbury* v. *Madison* (§ 145) and the *Slaughter House Cases* (§§ 213, 248, 249); while the way Congress has been aided and strengthened is apparent from the effect of the decisions in *McCulloch* v. *Maryland* (§ 168) and *Texas* v. *White* (§ 213).

Dangers of legislative interference.

Bryce, 198–200.

405. **Judicial Dependence on Congress.** — The independence of our courts is maintained quite as much by the operation of public sentiment as by any constitutional guarantees. So long as the existence of the lower national courts, the number of the Supreme Court justices, and, to some extent, the jurisdiction of the different courts is dependent upon statute, so long does the legislative department hold the judicial department at its mercy. The just pride taken by the people in the integrity and ability of the Supreme Court especially has restrained Congress from attempting to use its power except in certain rare instances, and the need of executive coöperation in a radical change of the judiciary tends to lessen any danger that might exist. In the period of reconstruction, Congress did more than once prevent the court from interfering with its work in the South; but, under such extraordinary conditions, when principles of long standing were not carefully observed, and more important infringements of constitutional rights took place, these acts were of comparatively minor importance. The spirit with which the nation accepted the federal judiciary act of 1801, by which extra circuit judgeships were created for partisan reasons, and of the law of 1869, which placed two more justices on the Supreme Court bench, partially for the purpose of reversing a decision of that court, are evidences that political parties cannot afford to do serious injury to the judiciary.

Executive disregard of decisions.

406. **The President and the Courts.** — The right of the President to appoint justices, with the advice of the Senate, is liable to abuse only when death or resignation occurs

Willoughby, *Supreme Court.*

Bundy, *Separation of Gov'tal Powers*, 62–68.

at an abnormal rate during a particular administration. But as the inclination to select personal friends or political allies is not less marked during recent years than in our earlier history, constant watchfulness is necessary to maintain the high standard of the past. The President is, however, quite as likely to do the court harm by refusing to respect its decisions. The three most conspicuous examples of this contempt were Jefferson's neglect to answer subpœna of the trial of Aaron Burr (1807), Jackson's treatment of Marshall in *Worcester* v. *Georgia* (1831), (§ 176), and Lincoln's refusal to allow Taney to issue writs of *habeas corpus* (1862), (§ 204). Cases of this character are rare, as the courts never seek to dictate what policy the executive shall adopt, and in two of those enumerated the action seemed justified by the circumstances. Yet it cannot be truthfully said that each department is the final interpreter of its own powers except within that limited field left it by the judiciary. In regard to most of the duties of Congress and the President, the decision of the court is final, alterable only through the votes of the people.

Separation without independence.

Cf. Bundy, *Separation of Gov'tal Powers*, 39–46.

407. **The Departments of the States.** — The separation of the departments in the states does not seem to have given as great satisfaction as in the national government, and its comparative failure may be interpreted to mean that separation without independence is not desirable. In the states the executive department is much more taken up with details of administration, and less concerned with duties of importance, than the national executive. In addition, these administrative tasks are assigned to many officials only nominally connected with each other. Naturally, then, the state executive is in a position much inferior to that of the legislature. The judiciary suffers in somewhat the same way; for though it has the right to declare laws null and void, it has much less influence than the national courts in defining the sphere of legislative action. On the other hand, the legislature enjoys an unusual degree of power because its powers are not specific and enumerated,

but general and residuary. That is, all of the limitations placed upon it are negative in character, it being excluded from certain things by the United States and the state constitutions, all else being left to its charge. Not content with these extensive legislative powers, it spends much of its time arranging the details of administrative action, thus further subordinating the executive officials to itself. It is, therefore, more like the English Parliament than the American Congress, although not an omnipotent body like the former. For all of these reasons, the legislative departments of the states may be said to control the other departments, though the latter are, in theory, separate and independent.

QUESTIONS AND REFERENCES

General Relations of Executive and Legislature

(§§ 389–395)

a. For the superiority of parliamentary over presidential government, consult Fiske, *Critical Period*, 289–300; Bryce, *American Commonwealth*, chap. XXIV; Bagehot, *English Constitution*, chap. II; Wilson, *Congressional Government*, chap. V; Bradford, *Lessons of Popular Government*, II, 320–415; also White, "Parliamentary Government in America," in *Fortnightly Review*, Vol. XXXII (1879), 505–517.

b. On the advantages of presidential government in the United States, see Snow, "Cabinet Government in the United States," in *A. A. A.*, III (1892), 1–11, and in *A. H. A.*, IV (1890); McConachie, *Congressional Committees*, 211–258; Lowell, "Cabinet Responsibility," in his *Essays on Government;* and Freeman, "Presidential Government," in *National Review*, XIX (1864), 1 *et seq.*

1. What has been the degree of success of parliamentary government in other countries than England? What conditions in France affect its operation there?

2. Make a list of the actual powers exercised by the English Cabinet from some manual of the English Constitution, and show what kinds of powers their executive has that ours has not.

3. Why is concentration of power not an evil necessarily? How is responsibility enforced in the English system? How for our Presi-

dent? for our Congress? Can an undesirable law be repealed most easily in England or in America? Explain how.

i. Classify modern governments as parliamentary or presidential, as far as possible.

ii. Name the great checks and balances of the American system. Enumerate the means or minor checks by which the great balances are maintained.

Congress and the Executive (§§ 396–403)

a. Plans for perfecting the fusion of the departments will be found in some of the references under *a*, above; also in Report of Senate Committee (1883), given in appendix of Ford's *Rise and Growth of American Politics*. See also Ford, *ibid.*, 365 *et seq.*, and Brown "Cabinet Officers in Congress," *At. Mon.*, Vol. L, 95 *et seq.*

1. Is the independence of the three departments in our central government so pronounced that we have three governments instead of one? If not, is there any danger that they may become so separated? Is better coöperation desirable? How can it be best obtained?

2. Show how the executive and the executive departments affected our financial policy under Jackson.

3. What is the purpose of a committee of investigation? How does it collect evidence? What is the usual result of its work?

4. Trace the loss of presidential power after the War of Secession, and show what influences led to his regaining a position of prominence.

5. Find what Congresses since 1875 have been controlled by the party which had elected the President. What bills of importance were passed by them? How did the nation approve their work as shown in the next elections? What Congresses have done the best work since 1875? Look up the composition of Senate and House, and ascertain the reason why the legislation was so successful.

6. What is the difference between the fusion of the departments suggested in § 403 and that actually existing in the British government? Is it possible to devise a compromise between presidential and parliamentary government that avoids the most glaring defects of each?

The Courts and the Other Departments (§§ 404–407)

1. What are the duties of the judiciary committees of the Senate and House? Do they command some of the best men of Congress? Does the composition vary from Congress to Congress? Are they a hinderance or a help to the courts? (Cf. McConachie.)

2. What legal right had Lincoln to refuse to deliver Merriman for trial on request of the chief justice? What moral right? In cases of insurrection, may the military courts entirely supersede the regular ones? If so, under what conditions? (Cf. § 204.)

3. If a United States revenue official imposes upon you an excessive and you believe illegal tax, what remedy have you?

4. Would the separation of the departments be an advantage without their independence of each other? Consider fully the bearing of § 407 upon this question.

CHAPTER XVIII

THE STATES: CONSTITUTIONS AND GOVERNMENTS

General References

Wilson, *The State*, 469–506.

Hinsdale, *The American Government*, 369–391.

Bryce, *The American Commonwealth* (abd. ed.), 287–396. The best brief account.

Clark, *Outlines of Civics*, 109–143. Outlines and questions.

Cleveland, *Growth of Democracy*, 109–127, 312–351. An excellent summary of details.

Oberholtzer, *The Referendum in America*, 99–172 (the second book of that name). On constitutions and their amendment.

Hitchcock, *American State Constitutions*. Chiefly historical.

Jameson, *Constitutional Conventions*, especially chaps. IV, VI, VII, VIII. The highest authority on the legal aspects of conventions and their work.

Cooley, *Constitutional Limitations*, especially chap. XVI. The great authority on interpretation of state constitutions and state law.

Shaw, "American State Legislatures," in *Contemporary Review*, LVI, 555–573. An excellent article on methods and powers.

Roosevelt, "Phases of State Legislation," in his *American Ideals*.

Stimson, *American Statute Law*, 1–114. Comparative statistics of the provisions of state constitutions (1887).

Poore, *Charters and Constitutions*. 2 volumes. The texts of most of the charters and constitutions since 1600 (to 1878).

New York Constitutional Convention Manual. 2 volumes. Texts of all constitutions in force in 1894.

Not subordinate to the United States.

Bryce, 291–296.

408. **Position of the States.** — The states of the American Union are self-governing constituent parts of the United States. They do not exist primarily or incidentally for the purpose of helping the national government carry on its work; they are essentially uncontrolled by that government,

but over it they have no power. The people of the state are, then, independent of all outsiders within their own sphere of action. They may make their own state constitution in their own way, framing such a government as they desire (provided it is republican in form), and granting suffrage and civil rights to whom they deem it wise, within the limitations of the United States Constitution.

Diversities principally in detail.

Spofford, A. R., in Lalor, III. 800–812.

409. Uniformities and Diversities among the States. — But as a matter of fact the forty-six states exhibit comparatively few differences in the general character of their constitutions, governments, and laws. In details these diversities are both numerous and conspicuous. The greatest dissimilarities are especially observable when we contrast newer states with those first settled or compare different sections, that is, they are principally due to historical or geographical causes, *e.g.* Michigan and Iowa will be more alike than Michigan and Arkansas. This is partly because Michigan and Iowa were largely settled by people from the same states and countries, and partly to climatic and other influences.

It is not the purpose of this and the succeeding chapter to take up the details of the state governments and constitutions, except to illustrate the more important principles, but the attempt will be made to show the general nature of the political system in the commonwealths, which is practically alike in all.

Groups of states.

F. J. Stimson, who has made an exhaustive study of the constitutions and laws of the states, calls attention to the groups of states among the members of which there is considerable identity even in details. He enumerates three groups; the largest comprising all of the "Northern, Eastern and Northwestern states, more often divided into two main bodies, the one following in its legislation the general model of the state of New York, the other that of the New England states." A second group contains the Southwestern states under the lead of Maryland and Virginia, and a third includes the Gulf states, except Louisiana, which is very different from the others in many respects. California, Dakota, New Mexico, and Georgia present many irregularities and in a measure cannot be classified with the others.

From colonial times to the present.

Bryce, 317–320.

410. The Development of the Written Constitution. — The constitutions of the states naturally grew out of the colonial charters (§ 66). All of our ancestors were accustomed to the idea of a fundamental law superior to the acts of the colonial legislature, and in most cases this law was written. It was not strange, therefore, that when the old colonial governments failed to prove satisfactory, they were replaced by others which were more popular, and that the people created new charters or constitutions prescribing the form and powers of government and enumerating civil rights. How the constitutions developed, and how new methods and subjects were introduced, we have considered in Part I. At this point we might notice the three stages in the historical process of constitution-making.

Constitutions first made by the legislature.

Borgeaud, *Adoption and Amend. of Consts.*, 137–191.

Appendix E, Table I.

411. The Three Stages in Constitution-making. — (1) The first constitutions were made by legislatures. Sometimes the constitutions were created by legislative act, passed like any other bill. More frequently the legislature practically transformed itself into a constituent assembly, which framed such a constitution as it desired; but the constitution adopted in this way could be changed by the legislature without calling a constitutional convention.

Later by conventions without ratification.

Cleveland, *Democracy*, 109–113.

(2) Much more common, even during revolutionary times, was the constitutional convention. This was chosen by the regular voters solely for the purpose of making a constitution. But so little had the idea of popular coöperation in government spread that public sentiment did not compel the convention to submit the completed constitution to the people for ratification. Before 1810 twenty of the twenty-five constitutions had been declared in force by the convention that framed them, two of the others being made by the legislatures, leaving but three ratified by the voters. Since 1838 this method has been used but four times, excluding secession constitutions and those adopted in 1865 : by Mississippi in 1890, by South Carolina in 1895, by Delaware in 1897, and by Louisiana in 1898.

(3) The third stage was reached when we find constitutional conventions with ratification. It must not be supposed that this mode of making constitutions was adopted by all the states at the same time. Massachusetts was the first to use it, in 1778, when the constitution proposed was rejected at the polls. It is now used in practically all of the states, though not always required by the constitutions now in force. The people are thus enabled to determine negatively, and to a certain degree positively, what shall be the character and powers of the state government under which they live, and what the most prominent features of the statute law shall be like. In other words, by the ratification of the constitutions the people have taken from the state legislature the power to make not alone those laws that are constitutional, but even many that are purely statutory, and have reserved to themselves the right of approving or rejecting these. Truly a specific application of the principle that the people should rule.

Still later by conventions followed by popular ratification.

Bryce, 324–328.

Oberholtzer, *Referendum*, 103–115.

412. **Process of forming a Constitution at the Present.** — The method that is all but universally used when a state wishes a new constitution is substantially as follows. The legislature takes the initiative by passing a resolution calling a constitutional convention. In many of the states, especially the newer ones, two-thirds of the members elected to each house are necessary, others require only a majority, and in twelve states there is no constitutional provision for general revision. At the next election the voters signify whether they favor a revision, and, provided they do, the legislature passes a new resolution, in which the number of members of the convention is specified, the districts prescribed, and the mode of choice designated. To this convention are usually sent some of the best men of the state, who make an earnest effort to improve the constitution. The new draft may be declared in force by the convention, except in one-third of the states; but is ordinarily submitted to the voters for acceptance or rejection as a whole, though occasionally with extra clauses on such subjects as

Method used in most states.

Oberholtzer, *Referendum*, 128–133.

Appendix E, Table II.

suffrage, prohibition, or the referendum, upon which the vote is taken separately. If the constitution is approved by a majority of the persons voting, it supplants the one in use. Some states are unwilling to leave to their governments discretionary power in calling these conventions, and require revision at certain stated intervals, *e.g.* New Hampshire has a new convention every seven years, Iowa every ten, Michigan every sixteen, New York, Ohio, Maryland, and Virginia every twenty.

By one or two legislatures with ratification.

Wilson. *The State*, §§ 1101–1107.

Oberholtzer, *Referendum*, 150–154.

Cleveland, *Democracy*, 114–127.

413. **Amendment of the Constitution.** — A great many of the changes in the fundamental law occur through amendment. Here we find less uniformity in the methods of the various commonwealths. In every case the amendment is proposed by the legislatures, and separately ratified by the people, before going into effect, except in Delaware. Three of the states ask only a majority of those elected to each House before submission to the voters; five require a three-fifths vote; nineteen states provide that two-thirds of each House shall give their consent; while sixteen, most of them older states, demand the consent of two successive legislatures by votes varying from a majority to three-fourths of the members elected. When we realize that very few of the states permit annual sessions of the legislature, we see that ample opportunity is given to thoroughly discuss the proposed changes in most cases, — an opportunity by no means well utilized, for constitutional amendments usually receive at the hands of the public a lack of consideration and attention that is unfortunate.

Why frequent changes are necessary.

Oberholtzer, *Referendum*, 94–96. Cf. also *ibid.*, 133–136.

414. **Are Constitutional Changes too frequent?** — Notwithstanding the restrictions placed upon alteration in the constitutions, there is a widespread belief that changes are too frequent and too radical. Is that feeling justified by the facts? If our standard of comparison is the United States Constitution, the difference is of course very great. No one of the original thirteen states now has its first constitution except Massachusetts, which still retains its constitution of 1780, amended however in thirty-six particulars.

Fourteen out of a possible twenty-three of the states have constitutions framed before the Civil War, only six adopted new ones between 1890 and 1900, while fifteen have had but one each. In view of the mass of material included within the present-day constitution, revisions seem no more frequent than is necessary. The defect is less in the continued changes than in the excessive bulkiness of these instruments, which are by no means the outline of government that the United States Constitution is.

Frame of government and non-constitutional provisions.

Wilson, *The State*, §§ 1096–1098.

Bryce, 306, 311–313.

Oberholtzer, *ibid.*, 87, 88.

Cooley, *Const'l Limitations*, 41–50.

415. **The Contents of the State Constitutions.** — The earlier constitutions were brief. They included, as a rule, a bill of rights, a frame of government, and provisions for suffrage, and perhaps amendment and education. Those adopted later not only cover more subjects, but treat each one at greater length, *e.g.* the new constitution of Louisiana (1898) devotes some three thousand words to "Suffrage and Elections," giving minute directions about even minor matters. But the most notable characteristic of the newer constitutions is the addition of articles relating to corporations, local government, public institutions, water rights and improvement, public lands, taxation, and many others. As stated above, the reason for this is the popular desire to have all important laws directly and personally approved by the voters.

Historical and practical reasons for the bills.

Cooley, *ibid.*, 47, 48.

Bryce, 307–311.

416. **The Bills of Rights.** — It might seem as though, with such constant surveillance of our governments by the people, bills of rights are unnecessary. Indeed, many persons believe that they are retained in the constitutions simply because their value was apparent in colonial times, and that now they are of little use. Many others feel that they still assure needed protection from the encroachments of the government, and that they act as a restraint upon the majority for the protection of individual liberty. We must not forget that the bill of rights incorporated in the first nine amendments of the national Constitution binds the United States government only, and does not affect the states in any way; and it may be well to remember that,

according to the best interpretation of state law, the legislatures of the commonwealths are held to have unlimited legislative power unless prohibited by the national or state constitution. In consideration of these facts, the uselessness of the bills of rights must certainly be clearly proved before we should accept the statement as true.

Some idea of the character of the provisions in most of the states will be given in chapter XXIV, Part III.

The central government.

417. The State Government. — All of the states have central governments and local governments. The state government always consists of the three departments — the executive, legislative, and judicial. The executive department is made up of the governor and of other administrative officials. The legislatures are invariably of two houses. There is always at least one state court besides the minor ones.

The local governments.

Most commonwealths have the two units of local government — the county and the township — in addition to the municipalities. None of these are true self-governing bodies, but are convenient territorial subdivisions of the state for the administration of state law supplemented by such by-laws and ordinances as each locality requires.

Similarity of the two houses.

418. The Legislature; Composition of the Senate. — Both houses of the legislatures are chosen by the qualified voters at regular elections. The upper house is different from the lower principally in its greater length of tenure, its smaller number of members, and its special duties.

Numbers and terms.

Bryce, 331, 332, 336.

The senates, as all of the upper houses are called, vary in number of members from fifteen in Nevada to sixty-three in Minnesota, the average being about thirty. The term of office in about two-thirds of the states is four years, in New Jersey it is three, in Massachusetts and Rhode Island one, and in the others two years. Sixteen states have the same term for senators that they have for representatives. In most of the states all the senators are not elected at the same time, so that the Senate is a continuous body. As a

rule, there are qualifications covering age, residence, and United States citizenship, and until 1897 there were property qualifications as well in little Delaware.

Numbers and terms.

Hinsdale, §§ 670–676.

419. The Lower House; Composition. — The lower houses have about three times as many members as the senates. At present Nevada has the smallest house of representatives, 30, New Hampshire the largest, 398. The terms vary from one year in four of the original thirteen states to four years in Louisiana and Mississippi, all of the others electing for two years. The qualifications for members are much the same as those of senators, except that the age limits are lower and the periods of residence shorter.

Election by districts.

Bryce, 332–334.

In practically all of the states, senators and representatives are elected from districts equal in number to the members of the respective houses. Illinois not only permits three representatives to be elected in each district, but provides for minority representation. In many of the constitutions we find the requirement that the members shall be residents of the districts for which they are chosen, and custom does not allow a non-resident anywhere in the United States to run as a candidate for the legislatures.

Biennial sessions with time limits the rule.

Oberholtzer, *Referendum*, 79–82, 85.

420. Legislative Sessions. — At the time the national Constitution was adopted (1787), long terms for members and short sessions for the legislatures were the exception. It is exactly the reverse now. Those states that hold annual election for representatives almost of necessity have annual sessions of the legislatures; but they are the only ones except South Carolina and Georgia. All the others think that if legislators come together regularly every two years, it is often enough. But most go farther by limiting the length of the session to sixty days, usually, or in three cases to forty days. Extra sessions may be called by the governor at his own wish or when requested to do so by a certain proportion of the members. He may even adjourn the legislature if they cannot agree upon a day.

421. Legislative Regulations. — Many of the regulations for the state legislatures remind us of those covering

Constitutional rules for the houses.

Cooley, *Const'l Limitations*, 158–163.

Cleveland, *Democracy*, 312–320.

Stimson, *Amer. Statute Law*, §§ 270–278.

similar subjects in national affairs (§ 258). Among these are the quorum, which is a majority of the members of each house in all but a few states, freedom of speech in the legislatures, the exemption from arrest during the session, the expulsion of members by a two-thirds vote, adjournment, the keeping of journals, the reading of bills, the judging of elections of members, rules regarding compensation and restricting the holding of other offices by legislators.

The course of a bill

The course of legislation is almost identical with that of Congress (§§ 260–263). The committee system is universal, and in some states no bill can be brought to its third reading without having first been committed; while in a majority of the states at least one-half of the whole number elected to each house must vote for a measure before it is sent to the governor.

Contained in constitution of the state.

Bryce, 339–341.

422. **Limitations and Prohibitions on Legislation.** — The state sphere of action has been defined in chapter IX. It is said to include all of the powers of government not given to the United States government exclusively or denied to the states by the national Constitution. Yet no state allows its legislature to exercise all of these powers. Every state constitution contains prohibitions and limitations which restrict the legislatures; but unless a legislature is thus restrained by either the United States or the state constitution, it has full power to pass any law it pleases.

Three classes of restrictions.

Laws made by constitutional conventions.

Wilson, *The State*, §§ 1096–1098.

Oberholtzer, *Referendum*, 83–86.

The restrictions upon the legislatures may be placed in one of three classes. I. Powers legislative in character denied to the legislature because assumed by the constitutional convention, subject to the veto of the people at the polls. There are embodied in every constitution a multitude of articles which are not properly constitutional, *i.e.* are not essential to the organization of the government, but are purely statutory, and are placed in the constitutions simply because the people consider them of such importance that they should not be left for each legislature to alter as it pleases. Because they are in the constitutions they can of course be changed only in the ways provided

for constitutional amendment or general revision. As stated above, some of these subjects covered more or less fully in the constitution are suffrage and taxation, debt limitations, municipal, county, banking, insurance, railway, and other corporations, public lands, education, militia and homestead exemption.

Prohibitions in constitutions.

423. **Powers not exercised by the Legislature or the Convention.** — II. The second class of limitations includes those powers prohibited to the legislature, but whose exercise is not assumed by the convention. Among the most common of these are the prohibitions of lotteries, denial of the right to give aid to religious bodies or schools, to hold stock in railroad and other corporations, or appropriate money for the same. Many constitutions repeat the prohibitions placed by the United States Constitution upon the states, as, *e.g.* those relating to bills of attainder, *ex post facto* laws, titles of nobility, slavery, suffrage, etc. Most of the states in their bills of rights place limitations upon the commonwealth governments similar to those contained in the first nine amendments to the Constitution for the national government.

Long list of subjects for which laws must be general.

Cleveland, *Democracy*, 348–351.

424. **Limitations upon Local and Special Legislation.** — III. There are, in addition, numerous limitations upon the legislature in the exercise of its powers. (1) The most important of these deals with the passing of local or special laws. Every modern constitution enumerates a large number of subjects for which the legislature can make only general laws. These general laws may then be applied by the courts or the administrative officials to particular cases, if they are capable of application at all. No special laws shall be made in most of the states relating to the granting of divorces, changing the names of persons, for creating private corporations, changing the law of descent, giving special privileges to corporations, and many others. Local laws are prohibited which would permit incorporation of some particular town and no others, laying out of certain roads or bridges, altering county or township lines, etc. —

all these matters being cared for under laws that apply equally to all parts of the state.

Sessions and bills.

Cooley, *Const'l Limitations*, 164–168.

425. **Legislative Procedure.** — (2) A second set of limitations deals with legislative procedure. Not only are the sessions of a definite duration, except in a few of the older states, but often no bill may be introduced within a certain number of days of final adjournment. Usually no laws can be passed except by bill, whose contents are expressed in the title and cover but one subject. The bill must be read three times, on different days, except for extraordinary occasions, and on the final vote must, in most of the states, be approved by a majority of those elected to each house. In all but one state bills are subject to the veto of the governor, and when not approved by that official must receive in each house votes varying from an ordinary majority in five states to two-thirds of the members elected in fourteen.

Bills relating to revenue, appropriations and indebtedness.

Cleveland, *Democracy*, 321–324, 343–345.

426. **Financial Regulations.** — (3) A third set of limitations lies in the domain of finance. Several commonwealths still retain the once universal and necessary provision that all bills relating to revenue should originate in the lower house, but nearly half now give the senates equal rights with its fellow-chamber. The taxes levied by law must be uniform, and no person is to be exempt from taxation unless made so by the constitution. Appropriation bills, except the general one, are to be confined to a single subject, and in the general bills the governor may often veto particular items. Frequently the legislature cannot incur any debt nor permit a public corporation to incur any. Some states, however, permit debts not exceeding a certain amount, if provision is made for the payment of these within definite periods.

Vast extent of legislative field.

Bryce, 371–373.

427. **Powers of the State Legislatures.** — Although this enumeration of some of the powers that the legislature cannot use, or can use only in certain ways, may mislead us into thinking that the legislatures do very little after all, we shall be convinced that this is not the case if we do

no more than examine the laws passed at a single brief session. The number of the laws and the variety of the topics treated are alike surprising, and for most of these the legislature does just as it pleases. As we have already seen, almost the whole domain of private and of criminal law is under its control, so that the individual is continually affected by the action or inaction of the legislatures.

Cooley, *Const'l Limitations*, 103–106.

428. **Special Powers of the Two Houses.** — The special powers in the states correspond, to some extent, to those of the two chambers of Congress, though less extensive. The impeachment of public officials is made by the lower house, and the trial occurs before the state senates, conviction following usually a two-thirds vote. The senates also have more power in appointing and in confirming appointments than the other branch of the legislature. The lower house, however, still retains the right to introduce bills to raise revenue in a majority of the commonwealths. In one state (Vermont) only the upper house can propose amendments to the state constitution, and in another (Connecticut) the house of representatives has that right.

Similarity to those of Congress.

Cf. §§ 272–275, 292.

429. **Defects of the State Legislatures.** — The law-making bodies of our commonwealths impress many critics as one of the least successful parts of our political system.

It is claimed that

(1) It is claimed, often without just cause, that they are composed of inefficient men, and, consequently, fail to command respect. Many reasons are given for this state of affairs, no one of which satisfactorily explains it. The mode of electing residents by districts has been assigned as the chief cause. The absolute control of states by political machines is often held responsible for it. Popular indifference to state government, due to ignorance of the importance of state duties, also plays some part. But hidden though the sources of the evil may be, the results of popular distrust in the legislatures are made plain in the general tendency to consider the law-making bodies a necessary evil. Many important duties have been given to the con-

legislators are incompetent

Bryce, 373–378.

Cf. also, *ibid.* 379–386.

Cf. Roosevelt, *Amer. Ideals*, 119–125.

stitutional conventions, the sessions have been made less frequent and are required to be short, and a constantly increasing field of legislation is being denied them.

and corrupt.

Roosevelt, *ibid.*, 125–142.

(2) Charges of corruption are by no means unknown; the influence of lobbyists, especially through the use of money being considered more potent than public opinion in so many cases. On account of the necessity of making laws affecting corporations, the legislatures are exposed to great temptations, which they may not be able to resist.

Senatorial elections and legislation.

(3) Though they have such important duties to perform for the state, the members are often chosen on account of personal preferences for senatorial candidates.

Ill-advised and ill-digested laws.

(4) Changes in the laws are made more frequently than the conditions demand, *i.e.* there is too much legislation. The whole sphere of state activity is of such a character that any change in the law interferes with many business or other operations. But instead of being sure that every change means improvement, the legislatures are constantly amending the statutes when the alteration does more harm than good.

Fortunately, all of these criticisms do not apply to any one of our state legislatures. Of some legislatures no one of them is true. Certain it is that they are due quite as much to popular apathy as to any defect inherent in the state government.

Decentralization of the administration.

Bryce, 367–370 (disadvantages).

430. **The Executive.** — The execution of commonwealth law is left to officials, central and local, very few of whom are under the charge of a single individual or responsible to one person. In other words, the administration of state law is very much decentralized. The chief executive official is the governor, who is aided by colleagues, either elected by the people or by the legislature, and in either case not responsible to the governor. There are often state boards of education, health, police, railroads, equalization, etc., sometimes under the control of the governor, but more often responsible to the legislature. Most of the actual execution and administration of law is done by the

county, town, and municipal officers, who are chosen in these local districts and, as a rule, are not even subject to supervision by the state executive.

Comparison of governor and President.

431. The Powers of the Governor. — It will readily be appreciated that the governor of the commonwealth is a very different person from the President of the United States. As shown in chapter XIV, the latter is very powerful and is the real executive head of the United States government, because the officials who administer the national laws are directly responsible to him; whereas the governor is only nominally the chief executive of his state, since he is obliged to share his powers with so many state and local officials, some of whom may, however, in the not distant future be brought under the control of the governor for the sake of executive efficiency.

Supervisory, appointive, military, and legislative powers.

Wilson, *The State*, §§ 1183–1194.

Bryce, 342–344.

Cooley, *Const'l Limitations*, 184–187.

Goodnow, *Comp. Administrative Law*, I, 74–82.

Yet the governor is by no means an insignificant personage. He has general oversight, if not control, of the state executive officials and boards. He has some power of appointment and some, though less, of removal. He has pretty full power to grant reprieves and pardons. He is commander-in-chief of the state military forces — the militia — except when they are called out by the President, and may put down riots, insurrections, and disorder of all kinds. If the state is actually invaded, he may raise an army. Like the President, he sends a message to the legislature at the beginning of each session. If the houses fail to agree, he may adjourn them, in most states, and call special sessions when necessary, either with or without requests from legislators. By far the most important power is that of vetoing bills. Only one state, North Carolina, now withholds this power from its governor; although Vermont, Connecticut, New Jersey, and Indiana require no greater vote to pass a bill the second than the first time. The governor usually has ten days, excluding Sundays and holidays, in which to sign a measure, and in many states has the pocket veto. In nearly one-half of the states he may veto particular items in appro-

priation bills. His legislative powers are, therefore, of no inconsiderable value.

Executive councils.

In Maine, New Hampshire, and Massachusetts the governor shares his powers with the executive council, though the two together usually have some duties given in other states to separate boards and heads of departments.

The governor's colleagues.

Wilson, *The State*, §§ 1195–1208.

432. Central Executive Officials. — In all of the commonwealths there are *secretaries of state* who look after the state seal, the records of the legislature and of other departments, take charge of election returns, and, in general, act as state clerks. All also have *treasurers*, who have the keeping of the funds raised by the legislature, paying them out on demands made out by the auditor or controller, and reporting to the legislature. They are of course under heavy bond to faithfully perform these duties. The *controllers* have a general supervision of the finances of the state, and recommend to the legislatures the amount of money needed for various objects, to which the legislatures, on the whole, pay less attention than Congress to similar estimates of the national Secretary of the Treasury (§ 295). They may have some power to audit the accounts of the local officials who use a portion of the state's money, and can possibly have some influence over the tax system in use. The *attorney-generals* are the legal advisors of the legislature and other state officials, and in that capacity may be aided by the state supreme court. Whenever the state has business in the courts, the attorney-general or his assistants represent it, or act as public prosecutors. Other officials, at times elected, but usually appointed, are the superintendent of schools, the state engineer and surveyor, and the superintendent of public works. The first of these is the head of the public schools of the state and has general supervision, usually under a state board of education. Where, as in a few states, he has power to hear complaints and remove unsatisfactory local superintendents, he wields an immense influence. The importance of the other positions depends largely upon the extent to

which canals, irrigating systems, and public buildings are necessary.

State administrative boards.

In charge of various departments are superintendents, boards, or both, chosen by legislatures or by the governors with or without the consent of the senate. Most of these have done little because not clothed with sufficient power, but there is every indication that in a few decades they will be able to supervise or control or actually administer many matters now entirely attended to by local officials. Among these are the departments of agriculture, chiefly taken up with stock inspection; of health; of education (§§ 445–450); of labor, concerned with gathering statistics and recommending reforms; and of railroads (§§ 612, 614). The state boards of charities and correction have duties of the first importance (§§ 458–462, 483–486), though many things that would naturally fall to them are still assigned to separate boards.

Elections and requirements.

Stimson, *Amer. Statute Law*, I, §§ 202, 203, 207, 208.

433. **Terms and Qualifications of Executive Officials.** — The governors, secretaries of state, controllers, and other elected officials are chosen by the electors of the whole state for terms usually of two or four years, occasionally for one or three years. Almost all the states prescribe certain minimum qualifications, the most severe of which apply to the governor and the lieutenant-governor. They cover citizenship, age, and residence in the state, always for these two and ordinarily for the treasurer, attorney-general, and the others. In a few of the commonwealths these and all other state or local officials are debarred from holding office if they ever fought a duel; and once in a while we run across a provision like that of North Carolina, where persons denying "the being of Almighty God" are also disqualified. All of these central executive officials are removable either by a two-thirds vote of the legislature or by impeachment by the lower house and trial in the senate.

Jurisdiction of state courts.

434. **The State Judiciary.** — Very few of the cases that come up for trial or adjudication within the United States

Cooley, *Const'l Limitations*, 206, 209, and chap. IV.

are decided by national courts. The vast majority are not only begun in state courts, but are decided by them without appeal to the United States tribunal. Unless a case involves national law, or for other reasons comes within the jurisdiction of the national courts, the final decision always rests with the proper court in the state, and is never carried beyond the highest state court. The importance of the work performed by the commonwealth judiciary is therefore evident, and the need of capable and enlightened judges fully informed concerning the interpretation of law in all the states is readily seen.

System commonly used.

Wilson, *The State*, §§ 1147–1167.

Stimson, *Amer. Statute Law*, I, p. 114 (table).

435. **State Courts.** — It is impossible to describe a system of courts which would apply to all of the states, but the systems tend to approach a certain type. There is always a highest state court, usually called supreme, the judges of which represent the whole state, *i.e.* there is but one court. It always has appellate jurisdiction from the court next lower, and sometimes has original jurisdiction in a very few cases. Its decision is final on all points connected with state law. Below this court are those usually called circuit, district, or superior, which are equal in number to districts into which the state is divided. These districts may be as small as the counties, or each may comprise many counties. The courts have both original and appellate jurisdiction. If the district is large, there are county courts in addition. The lowest courts for the rural sections are those usually held by the justices of the peace, and for the cities are the municipal courts. They have of course only original jurisdiction covering, however, minor civil and criminal cases.

Special courts.

Besides these courts there may be special ones for the consideration of equity cases, although in most states cases in equity are decided by some of the regular courts, and in several states any court may have jurisdiction over equity the same as law cases. Some states have additional courts which look after wills and similar matters, and are called probate courts.

Selection and term.

Baldwin, *Am. Judiciary*, 311–343.

436. Judges. — Appointment of judges, once universal, has been replaced in all except a few of the Eastern and Southern states by election. In Delaware all judges are appointed by the governor, and in three New England states by the governor and council. Some of the highest judges are appointed by the legislature. The terms of judges vary from two to twenty-one years, usually being longer for the higher judges and in the older states. There are often requirements in the form of minimum age limits and legal fitness.

Importance of the work of our courts.

Baldwin, *Am. Judiciary*, 72–121.

437. The Administration of Justice. — Our judiciary enjoys a unique and important position, not only as the guardian of individual rights and the interpreter of the state constitutions, but as that branch of the government whose action is final. From the decisions of the courts there is appeal only to the people, who may change the constitution or may elect judges with different views. In most cases, however, the decisions of the highest state courts must really be final.

Defects, criticisms, and remedies.

Taft, W. H., in *N. A. R.*, 187 (1908), 851–861.

Roosevelt, T., in *Outlook*, 96 (1910), 149–153.

Scoville, S., Jr., in *Outlook*, 92 (1909), 359–366.

White, W. A., in *American*, 69 (1910), 499–505.

Brewer, C. B., in *McClure*, 34 (1910), 677–686.

The dangers inherent in the exercise of such great authority, the fear that routine methods or technical decisions may delay or defeat true justice, the possibility that unwise jury verdicts (§ 573) may be upheld, and the probability that advantage may be given to parties with abundant means or extensive influence have awakened great popular interest in our judiciary. Some critics cite the apparently unnecessary delay in the trial and appeal of cases. Others call attention to the frequent failures to punish those who are guilty of murder or other crimes against society. Still others maintain that the courts have at times been made the instruments of class tyranny. Unfortunate as criticism may be of a branch of the government which should be above criticism, there can be no gain in refusing blindly to see faults that do exist. The remedy must come rather from just and wise discussion of defects and proposed changes. It must include higher ideals and standards for our courts, as well as greater popular respect for law and more complete

Untermyer, S., in *A. A. A.*, 36 (1910), 145–160.

subordination of personal or class interests to the common good. It must bring administration of real justice, not for the sake of the litigants nor of the courts, but for the best good of society.

QUESTIONS AND REFERENCES

The Constitutions (§§ 410–416)

a. For the work of some of the latest constitutional conventions see Thorpe, "Recent Constitution-making in the United States," in *A. A. A.*, II (1891), 145 *et seq.* (North Dakota, South Dakota, Montana, and Washington); *R. of R.*, on "A New Constitution for New York," IX (1894), 290–295.

1. Does popular coöperation in the making of constitutions or their amendments result in better constitutions? What are the advantages and disadvantages of popular ratification?

2. Will the constitutions, in all probability, become briefer or fuller? If the present fulness is a defect, how can it be avoided? Would you advocate making amendment more difficult, for example, half as much so as that of the United States Constitution? (Cf. Oberholtzer, *Referendum*, 94–96.)

3. Indicate what subjects, if any, you would drop from the present Constitution, or in what way the articles referring to these subjects should be altered.

(For answers to i–ii consult Appendix E.)

i. What sections or states adopted popular ratification the earliest? What section clung to the old method the longest? Which state has adopted the most constitutions? Which ones never had but one each?

ii. Where does the method of requiring sanction of two successive legislatures to amendments principally prevail? Is that method older or more modern than the two-thirds vote? Prove from Appendix E, Table II. How many state constitutions require that a new constitution shall be submitted to popular vote? Are these states principally in the East, South, or West?

iii. What states have apparently the shortest constitutions? What ones the longest ones? Does the statement hold good that "the earlier constitutions were brief — those adopted later not only cover more subjects, but treat each one at greater length"?

(For answers to iv–vi use your state constitution and state history.)

iv. How many constitutions has your state adopted, and in what years? Which ones, if any, were declared in force without popular ratification? What was the popular vote on each? Have any proposed constitutions ever been rejected?

v. How is your constitution amended? Are there any limitations upon the number of amendments proposed at one time or the frequency of amendment? How many amendments have been adopted for the present constitution? To what do they refer? Learn, if possible, how many have been proposed during the last ten years, and how many of them failed to be ratified. If you can, get the vote on those last submitted, and find out why they were accepted or rejected.

vi. Make a list of the important statutes in your constitution. Read over each one carefully. Do you believe it would be better to remove any or all?

The Legislatures (§§ 417–429)

a. Different views of the state legislatures are presented by Story, "The American Legislature," in *Amer. Law R.*, XXVIII, 683–708; Bridgman, "Legislatures: a Defence and a Criticism," *Amer. Jol. Pol.*, V, 598 *et seq.*; Roosevelt, "Phases of State Legislation," "The Albany Legislature," in *Century* (Jan. 1885); F. C. Lowell, "Legislative Shortcomings," *At. Mo.*, LXXIX (1897), 366–377; Bradford, "Reform of State Government," in *A. A. A.*, IV (1894), 838 *et seq.*

1. What is the difference in power, influence, and public confidence between the legislature of one hundred years ago and that of to-day? Account, as satisfactorily as possible, for the change.

2. Why are better men selected for constitutional conventions than for legislatures? Is there any way of procuring just as good men for the legislatures? If not, why not? If so, how?

3. What is the most satisfactory way of electing state senators? Do you advocate residence as an absolutely necessary qualification of legislators? Do you believe better results would be obtained to choose members of the lower house from large districts on a general ticket, with proportional representation?

4. Criticise carefully the defects mentioned in § 429. Which one has had most to do with the deterioration of the legislatures? Does any other besides those mentioned appeal to you as worthy of consideration?

(On i–ii consult Appendix G, Table II.)

i. Where are the states that hold annual sessions? Have any of these limitations upon the length of the sessions? Do they pay annual or *per diem* salaries? Are their legislatures large or small? What is the most recent constitution that provides for yearly sessions?

ii. What is the favorite ratio of membership in the two houses? Do the states with large houses have short terms or *vice versa?* How many states do not limit the length of the legislative session? How many of these are west of the Mississippi River?

(On iii–vi consult your state constitution, political code, state official register, etc.)

iii. For each house of your legislature give membership, term, qualifications, and salary of members, how often and in what ways districts are reapportioned.

iv. When are the elections held? When does the legislature meet? Are there any limitations upon length of sessions or time after which no bills may be introduced? If so, what? How many constitute a quorum? What vote is necessary to pass a bill the first time? over the governor's veto?

v. What are the general powers of each house? How do they compare with those of the United States Senate and House of Representatives? Which of the legislative regulations mentioned in § 421 apply to your state? What legislative power is the legislature expressly forbidden to exercise by the constitution? Give the most important limitations upon special legislation; upon legislative procedure; upon the use of money.

vi. In what senatorial and assembly districts do you live? How do they compare with other districts in your vicinity in population? in area? Who are your present representatives in the legislature? How long have they served in that capacity? What is the political complexion of the legislature?

vii. Learn, if possible, what important laws were made at the last session of the legislature concerning cities, especially the one nearest to you; affecting local rural government; changing the punishment for any crime; other subjects.

The Executive (§§ 430–433)

1. Give the chief advantages and disadvantages of executive decentralization in the states. What officials besides the governor or boards have the most power?

2. Account for the greater number of qualifications for governors now than in 1780.

3. What is a majority? a plurality? Is it better to require a majority vote for election of governor? Give reasons in full for your answer.

i. How many states elect the governors for one year? for two? for three? for four? In how many is the governor not eligible for the next term? What state has the lowest qualifications? the highest? Are they uniform or not on the whole? (Appendix G, Table III.)

ii. Is there a lieutenant-governor in your state? What are his qualifications? What other elected officials have you? What officials mentioned in § 432 are chosen by your legislature? appointed by the governor? Name the boards elected by the people; the chief ones chosen by the legislature or governor. Are their terms long or short as a rule? (Constitution and Register.)

iii. Does your governor have power to call or adjourn the legislature? What other legislative powers has he? Who exercises the right to pardon in your state? (Constitution.)

iv. When was the last gubernatorial election? Who were the principal candidates? Who was elected? By what plurality? What acts of special merit or demerit has he performed since taking office? Who is your secretary of state? your controller? your attorney-general?

The Judiciary (§§ 434–437)

1. Enumerate the chief merits and defects of popular election for judges; of long terms; of short terms.

i. Which section of the United States is most favorable to popular election of judges? to election by the legislature? to appointment by the executive? Where are the terms longest? shortest? How many of the courts have over five members each? (Appendix G, Table III.)

ii. How many grades of courts in your state? How many judges in the highest court? How are they selected, and for what term? What salary do they get? Can they hold court separately? Over what classes of cases have they jurisdiction? (Constitution or Civil Code.)

iii. Are there courts between the highest and the county courts? What are they called? How many are there? How many judges in each? Answer questions in ii for these and all lower courts.

iv. Where does the highest court hold its sessions? At what time or times? Name at least one judge. Name all the courts held at any time in your city or in the largest city near you. Do all of the judges belong to the same party? Has any attempt been made to make the bench nonpartisan?

CHAPTER XIX

SOME PHASES OF STATE ACTIVITY

General References

Ashley, *American Government*, revised edition, 103–142. A summary with numerous specific references.

Whitten, *Trend of Legislation in the United States.* The best summary of the work actually done during the last quarter century.

Hart, *Actual Government*, 535–571. A good general account.

Wright, *Practical Sociology*, 177–207, 371–403. Treats education, crime, and temperance.

Boone, *Education in the United States*, esp. 79–116.

Wines and Koren, *The Liquor Problem.* Considers the different systems of liquor control. Based upon careful observation.

Sites, *The Centralization of Liquor Administration in the United States.*

Wines, *Punishment and Reformation.* Largely historical.

Henderson, *Dependent, Defective, and Delinquent Classes.* An excellent discussion of social duties.

Boies, *Science of Penology.* Good accounts of methods used in punishing criminals.

Prison Reform League. *Crime and Criminals.* Prison abuses.

Annals of the American Academy, Nov. 1908 (Liquor traffic); July 1910 (Administration of Justice).

Bliss (ed.), *New Encyclopedia of Social Reform.* Excellent articles. Consult especially those on "Convict labor," "Crime," "Divorce," "Education," "Elmira reformatory," "Housing," "Juvenile courts," "Liquor traffic," "Local option," "Lynching," "Marriage," "Prohibition," "Penology," "Temperance," etc.

Periodical indexes under titles given above or mentioned below.

Disadvantages of diversity.

438. Uniformity and Diversity of State Laws. — In legislation and in administrative activity the states differ more widely than in their governments, although the differences are principally in detail, not in principles. As interstate trade

or interstate travel is no longer a thing of rare occasion, state boundaries ought not to be division lines between radically different systems of law. All of the changes of recent years show that need of uniformity in all of the great principles of state law is becoming constantly greater.

Cooley, *Const'l Law*, 184–190.

In some cases where the national Constitution has left a subject to state direction and concerted action was necessary, conferences have been called by the governors in order to agree upon desirable legislation or improved uniform methods of administration. The Annapolis conference (1786) which led to the constitutional convention in Philadelphia was of this character. Anti-trust conferences, irrigation conferences, and the annual conferences of the state governors, first called to discuss conservation of natural resources (§ 634), and since continued as the "House of Governors," have caused concerted action on important subjects. Legislative reference bureaus, which study the laws of other states, make uniform legislation easier. Most important of all is the work of the commissioners of uniform laws who meet once a year, recommending to their states the adoption of legal forms and methods that should be as nearly uniform as possible in all of the states.

Conferences and other means for securing uniform action.

Outlook, 89 (1908), 144–148.

Craftsman, 18 (1910), 444–447.

Burdick, F. M., in *American Year Book* (1910), 130–137.

439. Marriage and Divorce. — Divorce laws are very dissimilar in some of the states. South Carolina does not permit her courts to grant divorces for any reason whatever, and the laws in a few of the other states are very strict. In most sections, on the contrary, divorces are granted upon slight pretexts. For many years the more conservative states were unable properly to enforce their divorce laws, because their citizens, by temporary residence where the laws were lax, could easily obtain divorces. Bona fide residence is now required, and the other party to that action must be notified.

Divorce laws.

New Encyc. of Social Reform, 397–401.

Stevens, E.R., in *Outlook*, 86 (1907), 237–243, 287–293.

The diversity and the lenity of the marriage laws constitute a serious defect in our state system. Most states now require licenses, some of which are granted only to approved

Marriage laws.

applicants after an interval permitting examination of the legal fitness of the applicants. The greatest danger comes from the evasion of the law in one state by moving to a neighboring state where the restrictions are few. All but three of the states recognize the legality of such marriages.

Need of uniform control of "interstate" corporations.

Smith, in *Amer. Jol. Soc.* XIX, 132 *et seq.*

A. A. A., 32 (1908), 3–33, 235–258.

440. Control of Corporations. — A very important disadvantage of an entirely different kind, which is due to the lack of uniform legislation, affects corporations. No corporation can do business without gaining permission from the authorities of some state and complying with the state corporation law. Having done this, it proceeds to do business in that state and in others. This does not mean that the corporation is necessarily free from control in the other states, but that, as a matter of fact, the one state where it was organized has checks upon it and its management which the others cannot easily obtain. It will readily be seen that corporations will gravitate toward the states that have lenient corporation laws and low corporation taxes, for some states are glad to attract them on almost any terms. Consequently, there is likely to be a loosening of government control all along the line, as no state wishes to lose business. If that happens very frequently, it is ruinous alike to a proper system of state finance and a suitable regulation of corporations.

Lack of uniform laws and administration favors crime.

441. Criminal Legislation. — Considerable variety in the laws regarding crime is noticeable from state to state. This is true not alone because the definitions of crimes are unlike, but on account of the differences in the punishment meted out. For example, four states have abolished the death penalty for murder. In one state an offence may be merely a misdemeanor punishable by imprisonment for a short time; in an adjoining one it may be considered a felony, conviction for which means from ten to twenty years of hard labor. These inequalities are unjust and produce more law-breaking than would naturally result under uniform laws.

442. Lack of Uniformity an Apparent rather than a Real Evil. — The more we study the real differences that exist between the laws in force in various states, the more we are

impressed with the belief that the difference is not so much in the statutes themselves as in the interpretation. Take the subject of divorce, in relation to which the need of a single law is most generally recognized. The state laws are much more alike than would at first seem possible, and those who have given most attention to the question assert that the ease with which the marriage bond is severed in some of the newer states is due far more to the independent position of woman and the lack of disapproval among the majority of the citizens than to the leniency of the law. Since the public sentiment of any community determines, to a very large degree, the way in which state law is interpreted and applied (except where official action is principally influenced by selfishness or corruption) the evils which have arisen from an increase in the number of divorces ought not to be charged to the variations in state legislation, but to the differing standards of public morality in various sections. So far as the lax methods of some states have permitted husband or wife to evade the law of their own home, or have made the courts in the older states less strict in reference to divorce cases, diverse laws have done great harm; but if a national divorce law would inevitably be followed by the same interpretation in Massachusetts and in California, it might not have so favorable an effect as desired. In other words, our divorce laws do not seem to differ so much as the views held regarding divorce in different parts of the nation; and if the laxity of judicial interpretation in the West merely reflects, on the whole, the popular feeling, a stricter interpretation of the law would not remedy the evil.

Differences in administration would exist in different states under the same law.

443. **Means of producing Greater Uniformity.** — Were there no possible way to reconcile any differences between state laws, those that exist would occasion much greater difficulty than they do; but the United States Constitution prescribes that, "Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state." Most of the states go much

Interstate comity.

Cooley, *Const'l Law*, 190–201.

further than this, and provide that not only public acts, but individual ones under the law of another state shall be accepted and judged by the law of that commonwealth. *E.g.* if a man makes a contract in one state and moves to another, even though the laws of the second might release him from performing that after a certain time, he is bound still by the law under which it was made, so that differences in state law never release him from his obligations. Again, if a person dying in Colorado held property also in New York, his will if approved by the Colorado court will also be accepted by that of New York, even though the evidence would have been insufficient to prove it in the Eastern state. On the whole, the acceptance by New York, though perhaps open to objection in some respects, was far less objectionable than the rejection of the will.

Vast extent of uniformities.

444. **Uniformity in State Law.** — Yet we must not underestimate the degree of uniformity that covers almost every subject. The clearest idea of the extent to which state laws are alike can be given by quoting from Professor Woodrow Wilson, *The State* (§ 1114): —

"Unquestionably there is vastly more uniformity than diversity. All the states have built up their law upon the ancient and common foundation of the Common Law of England, the new states borrowing their legislation in great part from the old. Nothing could afford clearer evidence of this than the freedom with which, in the courts of nearly every state in the Union, the decisions of the courts of the other states, and even the decisions of the English courts, are cited as suggestive or illustrative, sometimes also as authoritative, precedent. Everywhere, for instance, the laws of property rest upon the same bases of legal principle, and everywhere those laws have been similarly freed from the burdens and inequalities of the older system from which they have been derived. Everywhere there is the same facility of transfer, the same virtual abolition of all the feudal characteristics of tenure, the same separation between the property interests of man and wife, the same general

rules as to liens and other claims on property, the same principles of tenancy, of disposition by will, of intestate inheritance, and of dower. Everywhere, too, contracts, common carriage, sales, negotiable paper, partnership, rest upon similar principles of practically universal recognition. We feel the conflicts, because we suffer under their vexations; while we fail to realize and appreciate the uniformities because they are normal and have come to seem matters of course. It must be acknowledged, moreover, that even within the area of irritation there are strong corrective forces at work, a growing moral sentiment, and a fashion of imitation, promising the initiation and propagation of reform. As the country grows socially and politically, its tendency is to compact, to get a common thought, and establish common practices. As it compacts, likenesses will be emphasized, diversities pared and worn away."

Private schools supplanted by public ones.

445. **Evolution of the Public School System.** — The subject of education has only within the nineteenth century become of especial interest to our governments, as it was formerly left almost everywhere to private parties. The transition from private to public control was gradual, occurring first in the Northeast in connection with primary and grammar schools, but completed earliest in the Western states, in which private schools were never numerous. Later, and in fact quite recently, secondary education has been undertaken at public expense, the private academies of the past having been largely supplanted by free high schools. During the transition period for both grammar and high schools some characteristics of the private system were retained, the whole expense of the schools not being borne by the public, but each pupil paying nominal "rates" to cover the balance.

In developing free schools in the West the impetus given by the public land grants of the United States government (§§ 187, 449) was of the first importance. These grants were for the benefit of the common schools and of state universities, which have been established in all of the

states formed from the public domain (*i.e.* the land once directly controlled by Congress) and in a few others.

Education an affair of the state.

446. State Systems of Education. — Except in a few states, the earliest public schools were organized by separate localities desiring them, and not by the states as a whole; but as the need of more satisfactory instruction and greater uniformity became apparent the legislatures began to organize regular state school systems. Very few of these provided at the first for any state school officers, or for any real uniformity in school law or administration. But gradually the systems have been elaborated till their details are all regulated by the state, though everywhere administered by local boards and commissioners. The schools are therefore, like so many other things, a phase of state activity largely under the direction of the localities.

Principles of state school law.

Among other things the state law determines whether the district, the township, or the county shall be the unit for school administration, and what officers it shall select, with the powers of each. It also prescribes a minimum list of subjects which every school must teach, the minimum school year, and the requirements of teachers of the different grades; but usually suitable means to enforce these regulations are lacking, except where the state contributes a large amount to the localities — which may be withheld for cause — or where the state board or superintendent is vested with considerable power. Since it is for the advantage of every district to have the best schools possible, control by state authorities is less necessary than it would be under different conditions.

Methods of state supervision.

Boone, *Education in U.S.*, 101–109.

447. The State School Board and Superintendent. — All but one of the states provide for some state school official, while most of them have state boards of education. The boards are almost always chosen by the governor or the legislature, but the superintendents are more frequently elected by the people. The duties performed by the boards may include the general oversight of the state system, the care of the state funds, and the examination of teachers, unless

that is assigned to county boards under their charge, and possibly the selection of the text-books, which in nine states are free. The board is expected to do what it can to improve the schools by suggesting new methods and by other means. The actual performance of those duties, besides others, is usually left to the superintendent or state commissioner, who is ordinarily a member of the board. He has, as a rule, very little power, being merely a supervisory official, but he may possess considerable influence. In addition to the subjects just mentioned, he has general charge of the holding of teachers' institutes and the issuance of certificates. In New York, and one or two other states, he is a real executive, with the right to hear and decide complaints and to remove teachers or commissioners for cause.

Draper, in Butler's *Schools in U. S.*, 17–22.

448. **Local School Administration.** — The counties almost always have boards of education, to whom the examining of teachers is intrusted under state laws, and commissioners or superintendents, whose chief duty is to visit the schools and to distribute the state and county funds to the different schools. In parts of the South there are no school taxes raised by any political division smaller than the county, and many of the duties elsewhere assigned to trustees are there performed by the county board.

County officials and school taxes.

Boone, *ilid.*, 113–116.

In the rural sections, the real administration of school law rests with the officials chosen either by districts or by townships. In either case there are usually three, but often six or nine, trustees elected by the voters of the locality, who hold office for three years, and have power to select teachers, provide for studies in addition to those required by the state, raise taxes, usually, and, with the consent of the voters, borrow money for new buildings. The district system is more common than that of the township, but if the districts are small, it is impossible to secure careful supervision by local superintendents, which is one of the greatest aids to successful work.

District and township systems.

Draper, in Butler's *Schools in U.S.*, 7–11.

In the cities the full control of the schools belongs to a board of education, occasionally of five members, but often

City supervision.

Boone, *ibid.*, 109–113, Draper, *ibid.*, 12–17.

much larger. There is always a city superintendent, and usually directors for special branches.

Sources of revenue. Boone, *ibid.*, 88–93.

449. **School Finances.** — The public schools of the United States cost in the neighborhood of $300,000,000 a year, of which about seventy per cent is raised by local taxes upon property, twenty per cent by state taxes, and the rest in other ways. Among the latter is the interest arising from the state school fund, which in the newer states is made up of the proceeds from the sale of public lands donated by the national government, consisting of one section of each township in the states formed between 1802 and 1848 and of two townships to those admitted later. Some of the older commonwealths have similar funds made up in part of "land script" given them by Congress and of funds set aside by the legislature for the purpose. In no case, however, does the interest from the fund cover more than a small proportion of the expense.

In some of the Middle, Western, and Southern states the amount contributed by the states nearly equals or at times exceeds that collected in the localities. A few of these states have taken advantage of this distribution of money to improve the condition of the schools, particularly by withholding a county's appropriation in default of required improvements ; but the chief benefit of collecting money through the state is the help given to the poorer districts which are thus assisted in their support of the schools.

Pedagogical schools. Boone, *ibid.*, 125–148.

450. **The Preparation and Selection of Teachers.** — The chief essential of a perfect school is not complete laws, careful administration, or vast expenditures, valuable as all of them may be, but a corps of fine teachers. Fifty years ago it was next to impossible to get teachers who were thoroughly informed or well trained, but most of the difficulties of that day have been overcome. Beginning with Massachusetts in 1839, the states have constructed state normal schools, and most of the state universities have established pedagogical departments. Teachers not prepared in either of these obtain certificates by examination.

Appointment of teachers.

But the excellence of the teaching corps depends upon several things other than the preparation. Of these the method of selecting teachers demands brief consideration. Almost without exception the choice of teachers is left to boards of trustees or of education, often composed of strong

partisans. As teachers are rarely appointed for a longer term than one year, there is ample opportunity for changes; and the new appointee, more often than should be the case, gets the position for personal or political reasons. Such changes can only be condemned, and the remedy lies in taking the schools out of politics and permitting the boards to dismiss only for a cause that satisfies the community.

Public interests involved.

451. **The Liquor Problem.** — The manufacture and sale of alcoholic liquors demands the constant control and supervision of state and local authorities. Intoxicants are generally believed to be responsible for the large part of the poverty, vice, and crime in existence, so that control is primarily for public protection, rather than to develop public morality. But another aspect of the liquor interests assures civic importance, and that is the part played by manufacturers and dealers in political affairs. No other business possesses as complete and as powerful an organization, or has as much to do with the election of officials, state and local. Particularly in large cities party nominations, appointments, especially on the police force, and certain classes of ordinances are dictated by those most interested in the liquor traffic. Occasionally we find that most of the primaries are held in the saloons, and at times even the election booths are located in them. The domination of this organization, like that of great railways or trusts which control certain states, is always to be deprecated and, so far as possible, avoided.

The question of temperance as such is a moral and not a political one, and only indirectly connected with state legislation and local administration. For that reason the following discussion deals exclusively with the liquor problem from the standpoint of government. As the courts have almost everywhere upheld the constitutionality of the most severe anti-liquor laws, the relation of regulation to personal freedom is not touched upon.

Eliot *et al.*, in *Liquor Problem*, 1–21.

452. **Systems of State Control.** — The regulation of the liquor business usually devolves upon the cities and counties; but the laws thus carried out are invariably made by

Eliot, in *At. Mo.*, LXXIX (1897), 182–187.

the state, and may be either in the form of statutes or embodied in the constitution. There are five main systems in use, three of which are now in force in all but two states. One of the others is the Ohio system of taxing saloons, just as some other kinds of business are taxed. The second exception is the county dispensary system which has replaced in South Carolina the state dispensary. The counties are now allowed to have dispensaries or local prohibition. The three which are much more common are the license system, state prohibition, and local option, which is a form of the license system with local prohibition.

The difference between a tax and a license is that the latter is issued before a saloon may be opened, and is granted only under specific conditions, *e.g.* payment of a sum of money to the government, petition from property holders in the vicinity, filing of a bond to observe all saloon regulations, etc. A tax can be levied only upon places actually doing business, but the saloons are of course subject to all laws made for police control.

Extent of and tendencies in the license system.

Eliot, in *At. Mo.*, LXXIX, 181–182.

453. The License System. — Most of the states permit licenses to be granted to liquor saloons upon certain conditions. Until recently the payment of the license "fee" was the principal one, the "fee" being moderate in amount, but there has been a decided tendency to replace low license with high license, to prohibit the location of saloons near churches and schools, and to be more particular about the parties to whom licenses are given. More stringent laws have also been made relative to the daily hours of opening and closing side entrances and closing on Sundays, election days and holidays, but all of these things have counted for little where public sentiment has not compelled at least a partial enforcement of the law, which happily has occurred in most places. The larger license fees have brought more money into the treasuries, but have increased the number of illegal liquor dealers, except where perfect administration of the law was possible. Violation of many of these regulations is unfortunately still the rule, particularly where the

police force overlooks the law-breaking for a consideration, or to avoid conflict with the liquor organization.

Results of "state wide" prohibition.

Johnston, in Lalor, III, 378–380 (historical).

Bliss (ed.), *New Encyc. of Social Reform*, 970–972.

454. State Prohibition. — Nearly one-half of the states have at some time prohibited the manufacture and sale of intoxicating liquors within their limits. At the present time, nine have such laws, and in one of these, Maine, the law has existed in various forms for sixty years. So far as manufacture is concerned, prohibition actually prohibits; but a different result is noticed in connection with the question of sale, and the result is easily summarized: where the community earnestly favors prohibition, public sale is impossible, while private sale is difficult and usually punished; where the community is indifferent, illegal traffic is common; but where prohibition is distasteful, as in all cities of size, there is little attempt to conceal the places where drinks can be obtained.

Local option in practice.

Oberholtzer, *Referendum*, 288–294.

Larned (ed.), *Hist. for Ready Ref.*, VII, 16–18.

455. Local Option. — In most of the states the towns, districts, or counties are permitted to decide, by popular vote, whether they will have license or no license. By this method local prohibition exists over one-half the area of the United States, but only in those parts where it is favored for social or business reasons. It can readily be seen that the enforcement of the law in these localities is likely to be better than that of prohibition states; but the difficulties of enforcement are apt to be greater because importations are easy. Although free from the glaring defects that characterize the administration of the anti-saloon law in states that have prohibition, local option, nevertheless, encounters much the same class of difficulties as those found under prohibition.

Administration more important than legislation.

456. General Results of Liquor Legislation and Control. — To whatever system we turn, we find that future problems far outnumber past solutions. But experience teaches some lessons of considerable value, viz.: that for the proper control of the traffic, careful and constant administration of suitable police regulations is the one thing indispensable; that laws which remain dead letters are not suitable; and

Bliss (ed.), *New Encyc. of Social Reform*, 725–727.

that there will never be careful and proper administration in the midst of popular apathy. With the moral aspects pure and simple we have nothing here to do; but, so far as we may judge from experiments, the process of making people good by legislation is a long and painful one.

Indirect influence of legislation.

Good, although indefinable, results are probably obtained from the laws made by most legislatures, that instruction shall be given in the public schools showing the injurious effects of alcohol upon the human body. The principal methods, however, by which temperance workers seek to decrease the amount of intemperance by prevention and reform, can be little affected by the attitude of the government.

Barbarous practices replaced by reformatory methods.

McMaster, *United States*, I, 98–102, IV, 532–549, VI, 96–99, VII, 145–153.

457. **Punishment of Crime in the Past.** — The punishment of crime has engaged the attention of States since civilization began, but the methods of punishment now in use are distinctively modern. In colonial times imprisonment was almost unknown, death being the penalty for the most serious offences, and some species of public torture, like the stocks or the whipping-post, being used for minor crimes. During the early national period there were prisons for the incarceration of criminals; but these were always of the worst description, the prisoners being herded together irrespective of age, offence, and other conditions, while often the prisons were nothing but cellars or mines. The gradual introduction of state prisons and more enlightened public interest did away with the worst of these evils. As the world began to realize that severe and arbitrary methods increased rather than diminished crime, greater attention was paid to reforming the criminal, while schools for the care of neglected children or youthful offenders sprang up on every side. Repeated efforts have been made to raise the standard of the local prisons, or jails, particularly through the creation of state commissions and superintendents; but, in spite of the progress made by a few states in some directions, the legacy of the past, with its attendant defects, is noticeable in some measure almost everywhere.

458. **Reform of Juvenile Offenders.** — Society's change of attitude toward criminals is nowhere so conspicuous as in its treatment of youthful citizens who break the laws. Since the crimes of even adults are considered to some extent the results of disease, an effort is made to correct in children physical defects which may cause lawlessness, and to give them incentives to better living. In most of our large cities youthful offenders are now tried in special juvenile courts, where justice is tempered with so much mercy that first offenders are almost invariably placed upon probation for several years, during which they are kept employed if possible, and required to report regularly to a court officer. The value of the work of reformation being accomplished by the famous "kids' Judge," Ben B. Lindsay of Denver, and other conscientious and able jurists in these courts cannot be estimated.

Juvenile Courts and probation.

Boies, *Science of Penology*, 245–263.

Survey, Feb., 1910.

A. A. A., 36 (1910), 49–86.

Mangold, *Child Problems*, 221–290.

459. **The State Prisons.** — Since almost all of the crime in the United States consists of the breaking of state laws, we should naturally expect that state authorities would control its punishment; but there seems to be nothing more hateful to the average American than a state police, so that practically all offenders are arrested by local officials, and most of them are confined in town or county jails.

Need of a state police.

The state prisons are reserved for the worst classes of criminals, who are sentenced for the longest terms. Their treatment varies greatly from state to state, but the discipline is usually neither extra severe nor mild. Solitary confinement is rare, while premiums are placed upon good behavior, through systems of commutation by which the term of confinement may be reduced greatly. Employment is provided, ordinarily for the purpose of keeping the prisoners busy, and incidentally for revenue. In a very few states the custom still persists of leasing the labor of the convicts to contractors, who take entire charge of them, paying the state a net sum for their services. The usual results are all that they should not be, and the only attempted justification of the disgraceful system is the annual profit.

Prison methods.

Ford, *Amer. Cits. Manual*, 112–124

Boies, *Science of Penology*, 125–132, 246–286.

Henderson, *Dependents, Defectives, Delinquents.* 276–307.

Elmira plan.

Wines, *Punishment*, 220–228.

About ten states have adopted a plan first tried in New York, and usually known as the Elmira plan. It applies only to persons convicted of a first offence, and not over thirty years of age. The methods are somewhat similar to those of juvenile reformatories, to be described presently, but include also what is known as the indeterminate sentence. This leaves to the superintendent the right to grant parole or even release where he believes it will be beneficial. The whole scheme necessarily demands great skill in management.

Value of reform schools.

Wines, *State of Prisons*, 125–132.

Mangold, *Child Problems*, 260–274.

460. **The State Reformatories.** — For many years state schools for the reform of juvenile offenders or unruly boys and girls have existed everywhere except at the South. As the name implies, they are really schools, whose chief aim is to make the inmates useful members of society by giving them some industrial training, a common school education, and by teaching them self-control and the rights of others. When properly conducted, and most of them may be so classed, they have rendered inestimable service to their respective communities in turning tens of thousands from criminal careers. Most of them take an interest in the graduates after they leave, seeking to keep an eye on them, securing good homes and steady occupations whenever possible. The work of prevention performed by these schools, and by others for homeless children, is among the noblest and most practical of the many functions performed by the states.

Defects of the jails.

Wines, *Punishment*, 313–315.

Conference of Charities and Cor., 1900, *Proceedings*, 44–64.

461. **The Local Institutions.** — When a person is sentenced for a short time he is usually sent to the county penitentiary, of which there are a great number. If awaiting trial, or held as witness without bail, he is confined in the same or in some local jail. Most of these institutions seem to have taken no share in the great advance movement for better prisons and better methods. Ordinarily they are unhealthful; often they are worse. No work is provided in most instances, neither is there any classification of prisoners according to age or crime. As all are thrown together and idleness prevails, local prisons cannot be said to be effective agencies in the prevention of crime.

462. The Problem of Correction and Reformation. — The solution of present difficulties is by no means an easy one, and includes much more than the methods employed by our penal and reform institutions, valuable as any improvement in those methods may be. Modern conditions are both more or less favorable to crime than those of former times. They discourage it because there are fewer sparsely settled sections which afford opportunities for concealment of crimes and the escape of criminals; because means of transportation are better, and because our cities are better lighted. It is said that the introduction of gas in London a century ago did more to prevent crime on the streets of that city than all the harsh measures of previous years. More than all else, universal education has helped to give people clearer ideas of right and wrong, and has proved a spur which has kept multitudes out of the ranks of criminals.

Conditions unfavorable to crime.

Bliss (ed.), *New Encyc. of Social Reform*, 334–336.

In the other direction several tendencies are perceptible. One of these is the great congestion of population in cities. The slums of our larger centres produce more recruits for the army that preys upon society than all reformatory and philanthropic efforts can reclaim. Another is the publicity given to wrong doing by certain classes of newspapers. As there is nothing which a person of criminal instincts so much desires as notoriety, the "education" of these journals is all in the wrong direction. To counteract these and other incentives to crime, the government can do very little.

Conditions favoring crime.

McClure, S. S., in *McClure's Mag.*, 24 (1904), 163–171.

Many good people question whether the milder penal laws and more lenient administration of to-day are effective in keeping down the number of criminals. They think that the increase in the applications of lynch law, and the accompanying disorder, are the outgrowth of popular disgust with the failure of the courts to punish with sufficient severity. To whatever cause these lynchings may be due, it is to be hoped that some more regular means will be found of administering justice to the offender.

Lynch law.

Gibbons, J., in *N. A. R.*, 181 (1905), 502–509.

463. Other State Activities. — The states through the central or local governments are doing a great deal for the

The public health.

Ashley, *Am. Gov't* (rev. ed.), §§ 118–121, 132.

New Encyc. of Social Reform, 8–10, 867, 899, 1051, 1092–1093.

preservation of health. These activities include (1) such negative work as the establishment of local or general quarantine to prevent the spread of contagious diseases; (2) such indirect action, especially in cities, as the creation of parks and playgrounds, the establishment of sewage systems, or measures to protect the public from defective plumbing, insufficient air and light, accumulated dust, rubbish, or filth (see § 503); and (3) such positive enactments as supplying pure water or the enforcement of pure food laws. Most cities have had local food laws and inspectors for years to secure the sale of pure milk and untainted meats or fruits, but not until 1906 were there national and state laws on the subject. The aim of these laws is to prevent, in the territory over which the government has jurisdiction, the sale of foods with poisonous, adulterated, or misbranded ingredients. The laws insist upon pure drugs, also.

Extent of state activity.

From the foregoing paragraphs we can probably obtain a very good idea of the relation of the law of one state to that of the others, and some conception of the methods used in the performance of state duties. The subjects treated cover a very small part of the field of activity of the states, but indicate, in a general way, how the states and the localities work together. Among other topics that are naturally considered phases of state activity are those of charity (§§ 482–486), suffrage and elections (chapter XXII), most of our legal rights and remedies (chapter XXIV), the chief problems of taxation (chapter XXV), and most industrial and labor questions (chapter XXVII).

Some phases not considered.

Some of those which are not separately treated deal with immigration, irrigation, public works, and many others. When we realize that almost nothing has been said about the private and criminal laws made by the state legislature, but that we have confined ourselves to general methods of administration and supervision, the scope of the states' work is seen to be far from limited.

Centralization of administration.

464. Increase of State Activity. — A marked increase in the number of functions now performed by the govern-

ment which were formerly in the hands of individuals, is seen in every connection with the above subjects. Two features of the increase are particularly prominent: one, that the state and local governments are doing more, and doing it better, than in earlier periods; second, that the states are beginning to introduce central machinery to supervise or even control local agents, bringing about greater uniformity and more perfect administration. Some states have gone much farther than others, especially in centralizing their administration; but all have done something in this direction and, from indications, will do much more.

Fairlie, *Cent. of Administration in N. Y.*, 192–207.

One of the most important of the newer centralized activities of the states is noticed in the creation of state public service commissions to supervise all public service corporations. Massachusetts, New York, and Wisconsin have tried these commissions with great success, and state commissions have been created in several other states. The powers include supervision of the issuance of stocks and bonds, regulation of rates, of new franchises, and of service, as well as the right to prescribe means for safeguarding life and limb.

Public service commissions.

Commons, J. R., in *R. of R.* (1907).

Marcosson, I. F., in *Munsey*, 43 (1910), 731–743.

465. State Finance. — The work of the states does not call for the excessive expenditure of money that characterizes the national government, with its large civil and military list, or the cities, with their costly improvements. The funds needed are raised principally from the general property tax (§§ 587–590), partially from corporation taxes and miscellaneous sources. More is spent for education than for anything else, about one-third of the whole. The rest is divided among the state government, state charities, reformation, etc.

Receipts and expenditures.

Bryce, 356–363.

QUESTIONS AND REFERENCES

Uniformity and Diversity in State Law (§§ 438–444)

a. On the subject of divorce in general, see Wright, *Practical Sociology*, 159–176; Woolsey, *Divorce and Divorce Legislation*, chap. V;

Wilcox, *The Divorce Problem;* Stevens, E. R., in *Outlook*, 86 (1907), 237–243, 287–293; Howard, G. E., in *McClure*, 34 (1909), 232–242. Arguments for and against a national divorce law are given by Stewart, G. A., in *Popular Science Monthly*, XXIII (1883), 224–237, and by Phelps, E. J., in *Forum*, VIII (1889), 349–364; Larremore, W., in *N. A. R.*, 183 (1906), 70–81.

1. Is it preferable to bring about necessary uniformities in law by interstate codes or by transferring the subject from the state to the nation?

2. Can the difficulties in the regulation of corporations be met by each state for itself by the adoption of suitable laws? Would a national law supplementing those of the states requiring "interstate" corporations to fulfil certain requirements in all of the states be of any value?

3. Why might a national divorce law uniformly applied "not have so favorable a result as desired"?

4. If the various localities in the state maintain their local "self-government" largely by being able to administer state laws loosely or literally (§ 469), is it not desirable to have as great diversities in state law as at present? Could national laws on these subjects, administered as national laws are now, be adapted to differing local conditions?

The Public Schools (§§ 445–450)

1. Why should schools be supported by the public and not partially by the public and partially by those benefited?

2. Name the benefits gained by having teachers examined by the state board of education; by the county board; by the school trustees. Give objections to each.

i. How is your state superintendent chosen? For what term? What powers has he? Give his name, and tell what school work he did before appointment to the position.

ii. Have you a state board of education? If so, of how many members? How selected? Does the method of choice guarantee men of the highest capacity?

iii. Does the county, township, or district system prevail in your state? What county officials have you? Do they give examinations? Have any of them ever visited your school?

iv. How many members are there on your school board? For how long are they elected? Do all go out of office at the same time? Is it the custom to reëlect these officials?

v. What proportion of your school fund is collected by the locality? by the county? by the state? Is any attempt made to relieve the poorer sections? To raise the standard of the schools in distributing the money?

The Liquor Problem (§§ 451–457)

a. Different views of the success of prohibition are given by Dow, N., in *Forum*, III (1887), 39–49; Patten, S. N., in *A. A. A.*, II (1890), 59 *et seq.*: Koren, in *Liquor Problem*, on "Maine," 22–95; Wines, in *Liquor Problem*, on "Iowa," 96–140; *A. A. A.*, 32 (1908), 97–133.

1. What classes of men are individualists (§ 27) when the control of the sale of liquor is being considered? Has the constitutionality of "state-wide" prohibition been upheld by the courts? Is prohibition an infringement of personal liberty? Give reasons for your last answer.

2. Which system of liquor control do you particularly favor, and on what grounds? Under license, what regulations are most essential in preserving law and order?

i. Has your state ever tried prohibition? For how long? With what success? What other systems have you tried?

ii. Have you high or low license now? With or without local option? Judging from the experience of your locality, what provisions of law are most essential? With what success is your law administered?

Punishment and Reformation (§§ 458–465)

a. On the treatment of criminals, see Wines, *Punishment and Reformation*, 325–370; Ellis, *The Criminal*, 233–282; Drähms, *The Criminal*, 331–389; Ferri, *Criminal Sociology;* Lombroso and Ferrero, *The Female Offender.*

1. Compare the number of capital crimes and methods of punishment for others in England (1600), Massachusetts (1650), the United States (1780), the United States (1830), and the United States now.

2. Trace the history of punishment for debt during the past two centuries, noticing former methods, abolition of imprisonment, and growth of homestead exemptions, and specifying in regard to the latter at the present.

3. What is the connection between the development of democracy and the substitution of mild for severe forms of punishment, and why should there be any connection? Has democracy had anything to do with the introduction of reformatory instead of repressive methods?

CHAPTER XX

TOWN AND COUNTY GOVERNMENT

General References

Wilson, *The State*, §§ 1209–1259.
Fiske, *Civil Government*, 16–98. Deals chiefly with origins.
Macy, *Civil Government*, 36–114. The four types.
Goodnow, *Comparative Administrative Law*, I, 178–192.
Ford, W. C., *American Citizen's Manual*, 53–84.
Bemis, "Local Government in Michigan and the Northwest," in *J. H. U. S.*, I, v.
Bemis (ed.), "Local Government in the South and Southwest," in *J. H. U. S.*, XI, xi, xii.
Shaw, Ingle, and others, on particular states, in *J. H. U. S.*
Howard, *Local Constitutional History in the United States*, especially 438–470. The highest authority on the subject.
International Congress of Charities, Report on *The Organization of Charities* (1893), 43–134.
Warner, *American Charities*. Discusses fully private and public methods and the relation of private to public work.

Almost all laws are made by the legislature.

466. Legislative Centralization of the State. — The position of the localities in the states is a peculiar one, because, while they are theoretically mere subdivisions of the state for purposes of government, in reality a large part of the states' work is done through their officials. We may express the relation of the states to the localities very briefly by saying that the legislative power of the state is very highly centralized; while the administrative power is just as highly decentralized. Now this statement requires a little explanation. How is the legislative power centralized? In this way. Practically all of the laws (national laws not being considered) under which we

live are made by the state legislature, most of the remainder being framed by the constitutional convention which, as we noticed (§ 422), has quite a little to do with the laws of most importance. Take the single subject of education. We have just seen that the state prescribes the form and powers of the school organization, *i.e.* whether the county, district, or town has charge of the schools, how many commissioners are chosen in each, what the minimum length of the school year is, what rights these localities have to raise money for the support of the schools, and a great many other details. The school trustees or the county board may make some supplementary regulations, but a casual examination of the state school law will show you that *the state legislates* for the schools.

There are few state administrative officials.

467. **Administrative Decentralization.** — We would naturally suppose that if the state makes the laws, the state will also execute them; but this is not done. Almost all *the laws of the state* are carried out, in other words *are administered by local officials over whom the state has no control whatever*. Even the judges of the lower state courts, who deal with state laws almost exclusively, are elected by the voters of counties or districts, and are responsible not to any central authority, but to the voters of that territory, at the next election. If it is really desired to have the law uniformly interpreted throughout the commonwealth, what guarantee have we for those laws involved in suits that are not appealed to a single state court? The same freedom from control marks the sheriffs, local health officers, in fact, all officials for the localities. The bulk of their duties may relate to state law, but they may interpret that law to suit the voters of their district. They administer it or they neglect it in the same way; and so long as their "constituents" do not object, the state authorities cannot force them to do it uniformly throughout the state, as we observed in connection with anti-liquor legislation. Perhaps we can see the effects of administrative decentralization in a truer light by the use of an illustration. Suppose

that the tariff acts passed by Congress were administered by local officials not responsible to the President. Let us assume that the tax collectors of the various ports of entry have charge of assessing and collecting the duties upon goods imported. Now, if the President cannot compel a collector to do his duty except by bringing him before a court for some offence recognized by law, we can readily see that one collector will be more lax than another, and confusion will follow; but the greatest loss will be to the national government, which will have been deprived of much of its power, because it could not properly control its administrative agents. To the national government this would be an irreparable injury, because its legislative power is strictly limited, and it would tend to degenerate into a government like that under the Confederation, in fact, would never have been able to lift itself out of its degraded condition during that period if its other laws had been executed in the same way.

Local government may be modified or abolished by the state.

468. **How the Dangers of Administrative Decentralization have been avoided.** — Why, then, has the state not suffered in a similar manner? For very obvious reasons. (1) The state (perhaps through the legislature, but usually in the constitution) creates the local political divisions and endows them with certain powers and rights. It may abolish them or change the methods of administration any time it pleases, in fact, its control over the localities is as absolute as that exercised by any political power in existence. If the state, that is, the people of the state, felt that administrative decentralization interfered with its work to such an extent that its power was being nullified, it could substitute another kind of administration for that in use. But the failure of the state to make such a change is evidence that administrative decentralization has not proved especially dangerous, though of course it does not account for the comparative success of a theoretically unsatisfactory system. (2) The reason that a fair degree of uniformity in administering the laws has been preserved is the control which the legislature

has over the local administration. This was formerly exercised in several ways; namely, by appointing and removing local officials, by making special laws, and by going into great detail in each law, telling just how it should be administered. Now the chief dependence is placed upon the last method, for even county sheriffs are chosen by the counties, while local and special laws are ordinarily forbidden by the state constitution.

Local officials are controlled in some ways by the legislature.

There are, however, disadvantages in the *legislative control* of local administration, and the tendency during recent years has been toward creating state boards and executive officers, as shown in chapter XIX, in order to get better and more uniform results.

469. **"Home Rule" in Rural Districts.** — What may be spoken of as the "home rule" of the localities consists of three principal things: (1) The right of each political division to decide matters of local interest for itself; (2) exemption from special legislation; and (3) the privilege of choosing all local administrative officials.

Nature of home rule.

(1) The rights belonging to the first class do not cover even all of the local ordinances that a county would naturally make; but, on the other hand, in a few states county boundaries are not changed, nor new counties erected, nor county seats moved except by permission of the county board and the voters. The last twenty-five years have brought the counties more rights of this kind at the expense of the legislatures.

Constitutional rights in local matters.

Oberholtzer, *Referendum*, 227–240.

(2) As most of the constitutions prohibit the passage of laws that apply to but one county or town, the localities are thus freed from considerable interference unless the legislature makes "general" laws, which divide the cities and counties into so many classes that the laws are really special. If the courts uphold these laws as constitutional, as some of them have done, the constitutional prohibition is of no value.

Freedom from local and special legislation.

Cleveland, *Democracy*, 348–351.

(3) By the election of all of the officials charged with the administration of law within the county or town, the locali-

Election of all local administrative officials.

De Tocqueville, *Democracy in Amer.*, I, 107–122.

ties are able to have the law applied as they want it. In practice, that gives them a great deal of "local option," permitting them to say, within certain limits, whether a state law shall be rigidly or leniently enforced; so that it makes less difference to them that the state legislature intermeddles with their affairs, since they are allowed to be under officers of their own choosing and do somewhat as they please in carrying out state laws. The objections to this method, because the state laws which should be uniformly administered cannot be, are without any doubt very serious; but the advantages, nevertheless, outweigh the defects. The right to participate in the choice of so many persons quickens an interest in government, and proves an education of the highest value in every community; while the right to ignore the most obnoxious features of laws makes improbable that antagonism to government which so quickly undermines all regard for law and order. De Tocqueville, accustomed to a system where there was more local legislative power than in ours, but constant supervision of local officials, accompanied by arbitrary power to remove them, is unsparing in his praise of the "*political*" advantages of administrative decentralization.

Town, county, and compromise systems.

Hinsdale, §§ 716–731.

470. **Types of Local Government in the United States.** — The unit of local government in the United States is either the county or the town. Where the town is most important, it is customary to speak of local government as town government. If the town has few powers, or does not exist at all, we call it county government; and where the counties are subdivided into townships, we speak of the compromise system of local government. In the third, or compromise type, the township varies in importance from a local district with limited financial and judicial powers to one which holds its town-meeting, elects several town officials, and transacts considerable business; but in no state using the compromise system does the town play a part in local government equal to that of the county in the same states. Speaking of the United States at large, local

government means really the government of the county, because outside of New England the smaller local districts are insignificant when compared with the county.

The extent of town government.

In the six New England states the town is the unit for local government. In the former slave states townships are almost unknown, and the local area smaller than the county is the school district, which has more powers the farther west and northwest we go, while the Border states have a local government of the county type with a constant tendency to give smaller districts more and more duties. New York and Michigan have townships with town meetings, which possess considerable vigor; but in all of the rest of the states, while townships exist, they rarely ever have much to do with the local government, and may not even be public corporations.

Towns are larger and foreigners more numerous.

Bryce, 406–408.

471. Historic Changes in the New England Town. — The reasons that led the Puritan colonies to adopt the town form of government have been considered (§ 59), and the nature of that government briefly treated (§§ 60–62). In its methods and general character the town meeting is little different from its seventeenth-century prototype, but in some ways it is radically unlike the meetings of two hundred years ago. Then the meetings were small, and every member had a definite interest in them. Now most of the towns are large, several having ten thousand or more inhabitants, many of the town meetings being in consequence of too great a size to permit more than a few leaders to exercise any great influence. A change has also taken place in the character of the population, caused by the immigration of many foreigners, especially French-Canadians, the foreign element increasing at a much more rapid rate than the native population. While it is a well-known fact that the town meetings have lost considerable in value by these changes, nevertheless there is no part of the country where the local government is as vital as it still is in New England.

Sessions and business.

Clark, *Outlines of Civics*, 178–186.

Howard, *Local Const'l Hist.*, 225–229.

472. The Town Meeting. — The town meetings are held ordinarily but once a year, though they may be called more often. Notice is always given by the selectmen, stating when the meeting will be held and what business will come before it. Gathering at the time appointed in the town hall, or some other public building, the voters select a chairman, called a moderator, and proceed to act upon the reports of all town officers for the succeeding year. The chief duties consist in the election of the new officials, who

are usually quite numerous, and the appropriation of funds for the general work of the town and for special improvements. It is interesting to see how carefully all details of town government, particularly in matters of finance, are regulated by the meeting, so that it never surrenders to its public servants the real control of its own affairs.

Selectmen, clerk, school trustees, etc.

Fiske, *Civil Gov't*, 20–24.

473. **Town Officials.** — The principal officials for executing the wishes of the town meeting are the selectmen, who vary in number from three to nine, and are now usually chosen for a term of three years. They take general charge of town business and represent it in the courts or in dealing with the county and the state. The school committee is composed ordinarily of three members, chosen for as many years, with quite full powers over the selection of superintendents, teachers, and text-books. All town records are kept by the clerk, and moneys are deposited with the treasurer, the taxes being levied by the assessor and gathered by the tax collector. Very few towns are without overseers of the poor and health officers, though the duties usually assigned to those officers may be left to the selectmen. There are usually several other officials, also, chosen at the town meeting.

Government and relation to the county.

Macy, *Civil Gov't*, 61–65, 70–72.

474. **The New York Town.** — The town in New York and in the states and parts of states that have adopted the New York system is, like that of New England, a public corporation, *i.e.* the citizens living within its boundaries are recognized as constituting a body corporate with the right to hold and dispose of property, to sue, and to levy taxes. It has its town meeting, which is held on a day designated by the county board of supervisors, this one fact illustrating the minor importance of the town in these states. There are no officials corresponding in power to the selectmen, but there is a supervisor, with some financial duties, who represents the town on the county board. He is therefore more of a county than a town official. The town also has a clerk, assessor, constables, besides overseers of the poor and highway commissioners.

475. The Township in the West. — Except in Michigan, where the town was directly implanted by the early settlers from New York, town government in the West has been of slow growth. The conditions which led to its adoption in New England (§§ 59, 62) have been absent, because agriculture was the sole occupation at first and the population was scattered. Professor Howard, in his invaluable book on *Local Constitutional History in the United States*, shows conclusively that county government was everywhere universal for economic reasons, and that the institutions of the states from which most of the immigrants came had comparatively little influence. That they did exert some, however, is shown by the experience of Illinois, the northern part of which was settled by people from New England and the Middle states, while the southern half was occupied by Virginians and Kentuckians. County government was the rule until farms became fairly numerous and villages sprang up. Then the northern part of the state began an agitation for a town organization, the Southerners offering serious opposition. The result was a compromise, which allowed any county to adopt the township system when its inhabitants desired it. The northern half immediately began to have townships, and now almost every county in the state is thus subdivided. The experience of Nebraska shows that the character of the local government depends more on the density of the population than on their nativity, because there county government alone existed till 1883 when the more populous counties succeeded in obtaining permission to create townships when desired.

Conditions affecting its form and powers.

Wilson, *The State*, §§ 1222–1233.

Howard, *Local Const'l Hist.*, 135–156.

As already suggested (§ 187), the township in the West grew up around the schoolhouse, and has been developed largely according to the educational needs of the community. Town meetings are rare, the townships are not even public corporations in many states, while the public officials are often limited to those with judicial, police, school, and, possibly, financial duties.

School district as unit of local government.

Bemis, in *J. H. U. S.*, I, v, 19–22.

A judicial and financial subdivision of the state.

Howard, *ibid.*, 458–464.

476. **The New England County.** — Everywhere the county, like the town at its best, is a public corporation clothed with power to sue and to be sued, to erect buildings for public use, to hold other property, and to assess and collect taxes to a certain amount. In New England the county is charged with fewer duties than elsewhere, and in Rhode Island it exists solely for judicial purposes. The chief authority is a board of commissioners, as in over two-thirds of the states; but they are concerned chiefly with the highways and certain questions of finance. Other officials are the sheriff, treasurer, and the justices of the peace.

The chief local unit of government.

Hinsdale, §§ 721–723.

Bemis, in *J. H. U. S.*, XI, 459–463.

Howard, 464–470.

477. **The Southern County.** — In the South the county, oddly enough, is but little better developed than in the Northeast, having less work to perform than the county of the West and Northwest. Some of the states still retain the justices of the peace as the administrative and judicial board, giving them control of most of the local affairs. More elect from three to five commissioners, who usually have fuller powers than the justices, though they do not form a court. One state (Georgia) centres these functions in one official, called the Ordinary. Other duties are performed by a sheriff, a county clerk, a treasurer, assessors, and tax collectors, and school officials. The county always has sole, or almost sole, control of roads, bridges, prisons, schools, and the poor, and raises all the money needed for all of these.

Subdivisions of the county.

Howard, 230–234.

Subdivisions of the county exist in all of the states, usually in the form of school districts, which are rarely self-taxing or with full power of administration. After the War of Secession, the reconstruction legislature tried to introduce into Virginia, and one or two states farther south, a township form of government, but the attempts to use it were soon abandoned.

In Louisiana the division corresponding to the county is called the parish.

General similarity of the counties.

478. **The County in General; County Board.** — It is impossible to describe, with any fulness, a county of any state

and have the description apply to many others; but there is, nevertheless, quite a little similarity the country over. Although the statements made below apply especially to the middle West, about the same officials, with much the same powers, are found in all sections, even in New England.

The legislative body, if we may so dignify the board that makes the county ordinances, is composed, in four-fifths of the states, of commissioners, three or five in number, elected for two, three, or four years by the voters of districts into which the county is divided. Among their duties is that of supervising all the other county officers, particularly those who handle the funds. They usually have charge of laying out townships and school districts, the care of roads, of the poor, and of public buildings in general. They ordinarily determine the amount of money to be raised for expenses within the county, and may act as a board of equalization to hear complaints of persons who believe themselves too heavily assessed. They may also have considerable power of appointment, though rarely of removal.

County board: election and powers.

Howard, 438–450.

479. **Chief Officials of the County.** — The principal single officer of the county is the sheriff who retains but few of the duties belonging to his powerful prototype of the Middle Ages. In a sense, he is the representative of the state in the county; but owing to the impossibility of removing him, except in a few instances, he is a county rather than a state executive officer. The maintenance of peace and order are in his hands, while the execution of all decrees and decisions of all but the lowest courts form his chief duty.

The sheriff.

Howard, 450–455.

Next in power to the sheriff is the person who audits claims against the county. This work may be assigned to a special official, called the auditor, but in many states it is left to the county clerk. The county clerk is also charged with keeping the records of the county board and courts, and he may have duties connected with elections.

Clerk and auditor.

School superintendent.

The head of the schools, called either a commissioner or a superintendent, has general supervision of all but city schools. He usually apportions the money, if any is expended by the state, for schools, visits them at stated periods, and may give teachers' examinations. Occasionally he has some power of selecting teachers and, more frequently, that of dismissal. In some, or all, of his duties he may be aided by a county school board, of which he is the executive officer.

Assessors.

Howard, 453–458.

480. **Other County Officials.** — When there is an assessor, as in a few states, the great opportunities for exercising his discretion in making an assessment high or low permit him to wield considerable power; but the almost universal custom is to accept the estimates of local assessors and have these estimates equalized by some county authority, preferably the county board. The collection of the taxes is often, but less frequently, left to the towns.

Treasurer, coroner, attorney, public administrator, and recorder.

The treasurer has charge of the money of the county, and is obliged to give a very heavy bond, which is forfeited if he appropriates any of the funds to his own use. The coroner investigates the causes, in case of violent death, and, to aid him, summons a jury, usually of twelve men, who hear evidence and render a decision. The attorney acts both as a legal adviser and as a public prosecutor to protect the county when a crime is tried in a county court. There are often public administrators, who take charge of the estates of persons dying without wills; recorders, who keep a record of all mortgages, real estate transfers, etc.; and land commissioners, who look after surveys.

An undeveloped municipality.

Goodnow, *Comp. Admin. Law*, I, 218–222.

481. **Incorporated Villages.** — Besides the counties, towns, and cities, there are incorporated villages which are incipient municipalities and play quite a part in local government. As a rule, incorporation does not take place except at the request of a majority of the voters within the villages. This is done under general statutes, which prescribe the method of action, the officials permitted, the date of village elections, and the limit of tax rate. The

special act of incorporation states also the boundaries, as well as the number, term, pay, and powers of officials, if not already specified in the law. There are usually trustees, who may make certain kinds of by-laws, a clerk, a treasurer, an assessor, a constable, overseers of the poor, and perhaps others.

Variety of functions.

Bryce, 413–416.

482. **Functions of Local Government.** — Three of the subjects to which the attention of local officials is greatly directed have been treated in the previous chapter. From what has been said, the freedom left to the localities in their administration of the school, liquor, and penal laws shows that in connection with these three phases of state activity the work done by the counties and the towns is no insignificant one. Two other functions of the localities deserve consideration, both of which are, in a sense, phases of state activity, but with which the state has less to do than even with education. One of these is the subject of charities, the other that of roads.

Limits of public charity.

Warner, *Amer. Charities*, chap. XIV.

483. **Public Charities.** — The care of the poor and of the defective classes, unlike that of criminals, is even yet left, to a large extent, to private organizations. Public charity occupies a much larger place in the work of government than a hundred years ago, partially because the trend of the nineteenth century was toward the obligation of society to her unfortunates; but, although certain kinds of charitable relief are now performed exclusively by our governments, certain others are thought to be better dispensed without the help of officials.

Work of the state boards.

Warner, chap. XVIII.

484. **State Boards of Charities.** — Over one-third of the states have created state boards, to have general oversight of state charitable institutions, if such there are. They may also do some visiting among the counties, offer suggestions, and make reports. The work is likely to be almost exclusively educative, although the boards may, of course, have some powers of supervision, or possibly control.

Care of the insane.

The state institutions which are most common are those for the blind or the deaf and the dumb. State insane asy-

Warner, chap. XI.

lums, or more correctly insane hospitals, are maintained by the more progressive commonwealths for the most violent cases, the milder ones being all but universally left in the charge of the counties. A large sum is expended each year for the care of insane patients and the attempted cure of acute mental disease.

Characteristics and defects.

Warner, chap. VI.

485. **The Almshouse.** — The bulk of the burden of public charity falls upon the county or, in New England, the town, though the city never fails to have some share of the expense. The counties maintain an institution generally known as the almshouse, but occasionally called by a less offensive name. This is primarily a home for the aged poor, and for those absolutely incompetent and without friends to support them. The poorest almshouses make no provision for the classification of their inmates or for the separation of the classes; the aged, the young, the blind, the sick, the feeble-minded, the insane, and the lazy being often herded together. In such an institution the practical management is no better than the theoretical arrangement, or lack of it; the person in charge usually being ignorant, if not rough or brutal. Fortunately, almshouses of this type are much rarer than formerly, and most of the localities nowadays provide for separate homes for children and the insane, or at least separate wards for the insane and the sick.

Dependent children.

Warner, chap. IX.

486. **Other Local Charities.** — Either public or private enterprise manages to find a means of erecting children's homes, for the purpose of keeping orphaned little ones out of the streets and away from evil influences. This is felt to be the most necessary step in the process of preventing crime, and that, consequently, it should be undertaken by the state for its own safety, if not for the sake of the children themselves.

Hospitals and dispensaries.

Many cities, and some counties and towns, maintain hospitals, at public expense, for those unable to buy needed medical care. Some of the larger municipalities also have free dispensaries, at which medical advice and drugs may be obtained without cost. The city physician, usually in

connection with the board of health, is paid by the city for the care of the sick poor in their homes.

Outdoor relief.

Warner, chap. VII.

Provisions, fuel, and other necessaries are in any localities granted by the overseers of the poor to families in need; but we are coming to leave this form of charity more and more to private parties, on the ground that they can more easily ascertain the real need of these things and prevent fraud. Public lodging-houses and employment bureaus, when properly managed, have proved themselves great blessings to the honest workman out of employment, and to the community in ridding itself of tramps.

Public aid to private charities.

Warner, chap. XVII.

Coler, *Mun. Gov't.*

Dangers of indiscriminate charity.

In cities, especially, large sums of money are annually appropriated to private organizations because it is hoped they will use it to better advantage. When that is done, the city should always be satisfied that the money is properly expended.

The great danger of all charity is that it is likely to aggravate the evils it attempts to relieve, through lack of discrimination. Like most of the other activities of government, but to a greater extent than most, it requires earnest yet disinterested officials, who shall possess some tact and much sense.

Means of improving highways.

487. Rural Roads. — In spite of the great development of railways in the United States, and of electric and horse-car lines between villages, the great dependence is, and always must be, upon our roads. To lay out roads in the right places, and see that they are kept in as good condition as the needs of the people demand, is usually the duty of the county board, though often of a town highway officer. The erection of bridges usually belongs to the same authorities. The state does little more than make general rules regarding the duties of local officials, the methods to be used in opening and closing highways, and some regulations, possibly, regarding width. A few states have, indeed, encouraged the improvement of roads by appropriating from the state treasury a maximum amount, to be distributed among the localities in proportion to the amount properly

expended by them for good roads. Agitation by wheelmen, to whom a bad road is practically useless, and the growing appreciation of the fact that in a fairly well settled section a poor road is, in the end, more costly to the farmer than a good one, is doing much toward improving country highways.

QUESTIONS AND REFERENCES

The State and the Localities (§§ 466–470)

a. For a comparison of local government in America with that of France, Germany, and England, respectively, see Wilson, *The State*, §§ 440–471, 588–613, 952–985, and Goodnow, *Comparative Administrative Law*, 266–294, 295–338, 234–265. For fuller discussion or relation of local to central government in England, consult Maltbie, *English Local Government of To-day*.

1. What part did the theory that the state is sovereign play in making the state absolute in its control of the counties and townships? Would there be any advantage in giving the localities a sphere of duties of their own in which they would be as uncontrolled by the state as the nation now is, in other words, could a federal system be established with profit *within* a state? What is the lesson taught by the history of centralization (§§ 232–234) about the probable permanence of such a small federal system?

2. Summarize the advantages and disadvantages of decentralized administration. Which is more desirable, greater uniformity in state law or more local government, as we use the term? How can we best obtain the greatest uniformity with the largest local liberty of action?

i. Enumerate the list of subjects for which special laws are prohibited to the legislature by your state constitution. Are the prohibitions effective or otherwise, *e.g.* how many classes of counties in your state and how many classes of cities?

ii. How are county seats located in your state? How are county boundaries determined? What officers are prescribed for the county in state law? What ones, if any, by county vote? By whom is the amount of salaries determined?

Town Government (§§ 471–475)

1. Why is the town system not adopted everywhere as the sections become more densely populated? Would it not be an advantage to have town government in all of the states?

i. What is the political division smaller than your county called? How many are there in the county? Are they public corporations? What officers has it? Does it ever hold a meeting of all of the voters? If so, when, and for what purpose? If living where the town is important, answer all of the questions on counties and county officials which would apply to town officials.

County Government (§§ 476–481)

i. How many counties in your state? Are any of them natural subdivisions? How do they compare in area and in population? Do they have equal representation in any part of the state government, or do those with few inhabitants have an undue proportion of representatives simply because they are counties?

ii. In what county do you live? Has the name any historic meaning? What is its area? its population by the last census? What is the county seat? Is it centrally located? Is it the largest city in the county?

(Consult Political Code for most of the following.)

iii. How many members on your county board? How, when, and for what term are they chosen? What powers have they? What are they called?

iv. What is the term of the county officials? Are all elected at the same time and for the same term? Are any appointed by the state government? Give the highest and lowest salaries of elected officials. Do the offices command the best men?

v. Select the sheriff, clerk, or other officials and answer the following: Is he a partisan? How long has he filled the position? What was his record before entering office? Has he given satisfactory service since?

vi. If living in a village, give population, limits, date of incorporation, officers, salaries, and an estimate of the success of the village government.

vii. To whom do you go to get a warrant to have some one arrested? Who serves it? Of whom do your teachers get their pay? Who issues teachers' certificates? Are copies of deeds and mortgages kept? With whom? Why? Who takes charge of estates of persons dying without wills? If a will is made, how is it admitted to probate? What is an executor? What is meant by a deed? by the title? How is each obtained? What is a mortgage? How is a mortgage foreclosed?

Functions of Local Government (§§ 482–487)

a. On public charities in this country consult Warner, *American Charities*, Part II; Whitten, *Public Administration in Massachu-*

setts, chap. III; Fairlie, *Administration in New York*, 78–114; Report on *Organization of Charities* (1893), 43–134.

b. On charity in England, see J. L. Lowell, *Public Relief and Private Charity*, 9–48; Maltbie, *English Local Government*, chap. II. On charity in France, *Organization of Charities*, 148–167.

1. Is there any good reason why the county officials shall be partisans? What proportion of their duties relate to political policies? Is administrative ability essential?

2. In what ways may charity become indiscriminate? Why is public charity more likely to become burdened with abuses than that in private hands? Should charity become more of a government affair or not? Why?

i. Have you a state board of charities? If so, what powers has it? How is it chosen? What has it done to improve the condition of the institutions of the state?

ii. Where is your almshouse located? Is any attempt made to separate the different classes of inmates? Is there a farm connected with it? Does it seem to be well managed?

iii. Learn whether any or all of the classes of charity enumerated in § 486 are dispensed by your local governments. Are any others?

iv. Are your roads laid out and cared for by the town or the county? What was the expenditure last year? Are the roads of your section well located? How are they improved? Are they satisfactory?

v. Get the report of the treasurer or auditor for last year. What is the assessed value of property in the county? the tax rate? the total receipts? the expenditures? Name the chief items of expense in their order. Which ones are increasing most rapidly?

CHAPTER XXI

THE MUNICIPALITY

General References

Bryce (and Low), *American Commonwealth*, 417–444. Gives both English and American views of municipal conditions and success.

Coler, *Municipal Government.* Experiences in New York City at the close of the nineteenth century.

Conkling, *Municipal Government in the United States.* Furnishes many interesting facts.

Wilcox, *A Study of City Government.* An excellent handbook; subjects treated under problems of Organization, Function, and Control.

Goodnow, *Municipal Home Rule.* Discusses the legal rights of the municipality.

Goodnow, *Municipal Problems.* Treats the relation of city to the state and the principles of organization. The best single volume on the city.

Eaton, *The Government of Municipalities.* Covers the subject pretty fully; everything considered from standpoint of "civil service reform."

National Municipal League, *Conferences for Good City Government.* Reports to 1898 on government of different cities; for 1899 suggests a model city charter and discusses it.

Johns Hopkins University Studies, V (on different cities).

Parsons, *The City for the People*, 17–254, 387–474. Strongly favors municipal ownership.

Maltbie, *Municipal Functions.* A study of the development, scope, and tendency of municipal socialism (Municipal Affairs for December, 1898) on American and foreign cities. Invaluable for reference.

Bemis (ed.) *et al.*, *Municipal Monopolies in the United States.* Separate papers upon Water, Gas, Electricity, and other functions; favoring public ownership.

Periodical indexes under City or Municipal Government, Reform, Functions, Ownership, Debt and Franchises, Public Ownership, Charter, Mayor, Council, Street Management, Water Works, etc.

Special difficulties in city government.

Low, S., in Bryce, 428–432.

Goodnow, *Mun. Problems*, 282–311.

488. **Some Problems of the City.** — The government of municipalities has furnished a large number of problems whose solution is engaging the attention of prominent workers and thinkers. So far in our history our city government has been deemed quite unsatisfactory, but as the subject has not received the consideration it deserved until recent years, there are good prospects of decided improvement in the near future. A hundred years ago our urban population comprised less than five per cent of our whole number, no city having 100,000 people. In 1850 New York had but 500,000 souls, and nearly ninety per cent of the inhabitants of the United States resided in the country. The census of 1900 shows that nearly one-third of the people of the United States live in cities having a population of at least 8000 each, and that thirty-eight cities have passed the 100,000 mark. This rapid growth of cities, often covering great areas, has meant that many new duties have been assumed, and that great sums of money have been expended. Meanwhile, the cities have been passing through several experimental stages of government, and have received large accessions of foreign immigrants who have brought with them little or no experience that would be of any value in their new homes. The democratic principles of an almost unrestricted manhood suffrage, popular election, and the "spoils system" have not, on the whole, tended to improve a government whose successful operation demands careful and efficient administration.

Areas.

The area of one-third of the cities with over 100,000 each is 40 square miles or greater, four of them covering over 100 square miles apiece. Smaller cities, especially in the West, are territorially very much larger in proportion to the population.

Elements of population.

The number of aliens in our large cities has been particularly noticeable since 1860. The census of that year shows that New York, Boston, Brooklyn, Chicago, and Cincinnati had between forty and fifty per cent of foreigners. By the census of 1890 New York City, with a population of 1,515,301, had 639,943 of foreign birth and 579,275 Americans of foreign parentage, while in San Francisco those whose parents were born abroad numbered seventy-eight per cent of all, and in Milwaukee

those whose parents were native Americans equalled less than fourteen per cent of all. It must be admitted that some of the Americans of foreign parentage took more interest in municipal government than descendants of revolutionary patriots, but a considerable percentage were not truly American. What was true of New York is in some measure true of almost all of our cities, in which at least half of the voters were born abroad, because among immigrants there is a smaller proportion of women and children.

Colonial period.

Goodnow, *Mun. Problems*, 1–21.

Fairlie, J. A., in *Mun. Program*, 1–11.

489. **Development of Municipal Government.** — We may distinguish three periods of municipal development: (1) The earliest may be termed the colonial period, though it persisted till perhaps fifty years after independence was declared. The cities were governed under charters granted first by the King or royal representative, and afterward by the state governors. Full powers were given and exercised by a single body, composed usually of councillors, mayor, and treasurer, all of whom had legislative, judicial, and executive duties. As a rule, the councillors were chosen by a select set of voters, the mayor and treasurer being appointed by the state governor.

Period before Civil War.

Fairlie, 11–20.

(2) The second period was one of reorganization upon a democratic basis. Charters were now granted by the legislatures and revoked or modified at will. Separation of the departments, already begun, was completed. Popular election was substituted for appointment in the selection of most administrative officials, and the council was gradually stripped of its more important duties.

City government since 1860.

Fairlie, 21–35.

(3) The third period marks the complete supremacy of the state legislature in city affairs. It is almost needless to say that this stage still exists. The council has been still further reduced in strength, its legislative rights being largely assumed by the state, in spite of constitutional restrictions upon the passing of local and special laws. Administrative power is being concentrated more and more in the hands of the mayor, with the hope of obtaining greater efficiency and responsibility, while recently a decided effort has been made to give the municipality, as a whole, a larger sphere of action.

A subdivision of the state and a centre of population.

Goodnow, *Mun. Problems*, 22–89.

490. Twofold Functions of the City. — Like the county, the city is a public corporation created by act of the state legislature, but, unlike the county, it is more than a convenient subdivision of the state for the proper administration of state law. It is primarily a thickly populated district endowed with definite powers for the satisfaction of its own local needs. This twofold character may perhaps be best explained by illustrations. (1) There are a great many things, like the laying out of streets, street lighting and grading, protection from fire, the building of sewers, regulation of water supply, transportation, and a multitude of others that are vastly more interesting and important to the people of the city than to the people of the state, and which they should be left to control, as far as possible, in their own way. (2) On the other hand, the laws for the protection of life and property, the system of public education, measures for the preservation of health, and the care of the poor originate with the state government, because it is essential that these things should be fairly uniform throughout the state. It may be necessary for the cities to have more elaborate machinery to carry out these state laws than less populated districts, but they remain matters of state rather than municipal concern.

An act of the state legislature.

491. The Charter. — So far as the city has a fundamental law, it is the charter. This document is, however, merely an act of the legislature, except in Missouri, California, Washington, and Minnesota, and is subject to repeal and amendment like any other law. No incorporation occurs ordinarily unless a town requests a city form of government; but the city is not able to determine for itself the nature of its government nor the character nor extent of its functions, as the legislature has complete control of everything, usually even the smallest details. Like the commonwealth constitutions, the charters are quite full, so that the ordinance-making power of the council is sure to be limited.

492. Reform in Charter-making. — Before 1850 there were several instances where charters were framed by city conventions, but until 1875 no constitution provided for city coöperation in making charters. Missouri in that year took the first step toward city self-government. California, Washington, Minnesota, Oklahoma and Oregon have since adopted similar plans.

It is scarcely possible that such a practice will soon be widely adopted, but there is reason to hope that in time the states will permit the cities to decide under very general laws what form of government and special requirements are best suited to their own needs.

Charters made by cities.

Parsons, *City for People*, 415–427.

Oberholtzer, *Referendum*, 343–367.

Future of home-rule methods.

493. The Council: Organization. — The council is the legislative municipal organ. In about one-fourth of our cities it is bicameral, the upper house often being chosen from the city at large or from a few districts, the members of the lower house representing wards. Where there is only one chamber, it is ordinarily made up of one representative from each ward, although some cities have preferred election by general ticket or by districts. The first method insures local representation; the second and third are likely to secure better men. Election by the city at large has the disadvantage of giving the dominant party an undue majority unless there is some provision for minority or proportional representation, of which we have no conspicuous examples as yet.

Number of chambers and election of members.

Goodnow, *Comp. Administrative Law*, 215–217.

Conkling, *Mun. Gov't*, chap. III.

Wilcox, *City Gov't*, 143–168.

Since the opening of the twentieth century, there has been a widespread movement to make a small council or commission the sole governing body of the city. As each member of the commission is also head of some administration department of the city, the plan provides for rather complete coöperation of the municipal legislative and administrative branches. Many believe that such a concentration of power in the hands of a few powerful and responsible commissioners will remedy the evils of city government better than the centralization of the mayor's power, which was the favorite device of reformers in the last decades of the nineteenth century. The commission form will probably be found to be the best in many cities.

City government by commission.

Russell, C. E., in *Everybody's*, 22 (1910), 435–447.

Limited character of powers.

Goodnow, *Admin. Law*, I, 213–215.

Cf. Goodnow, *Mun. Problems*, 215–246.

Wilcox, *City Gov't*, 168–179.

494. **Powers of the Council.** — The powers which are exercised by the council are those delegated by the legislature and enumerated in the charter. They are thus subject to restriction or alteration at the will of the legislature. Being enumerated, they apply solely to the subjects mentioned in the list of powers. These are of two classes, one dealing with the kinds of ordinances, or local laws, that the council may pass, the other referring to finance. Ordinarily the larger, but not the whole, part of the ordinance-making power is vested in the council, covering everything for which by-laws are necessary, except certain police and health regulations, which are proclaimed by the boards of the respective departments. To the council is given the right to determine how much money shall be raised for city expenses, though in recent charters it is often degraded to a mere revisory body. It arranges for the borrowing of money for permanent improvements, subject usually to a vote of the people on each important loan, and subject also to the limit of indebtedness prescribed by the city charter. The granting of franchises is ordinarily left in its hands, and it has the power to make contracts as well.

Two classes of mayors.

The mayor without power.

Conkling, *Mun. Gov't*, chap. II.

Wilcox, *City Gov't*, 181–191.

495. **The Mayor.** — The position of the mayor is very different in different cities. He is always chosen by popular election, usually for two or four years. In most of the cities that have not had their governments remodelled recently, the mayor has a position similar to that of the state governor. His greatest influence comes from the power to veto ordinances. He may have some power of appointment, possibly of removal, but he has no control whatever over the other executive officials, who are also elected by the people; and he may not be able to do anything with the executive boards or appointed heads, who are possibly chosen by the council or even by the state legislature.

The mayor with power.

The mayor who has been fortunate enough to be given centralized power is rather to be compared with the President of the United States, for not only has he the veto, but

almost sole power of appointment and removal of the whole administrative service. His term is apt to be short, but his pay is large. The right to submit an estimate of the amount of money needed to run the government — an estimate which the council cannot increase — may be given him in extreme cases. But with concentration of power comes increased responsibility, as he may ordinarily be removed by a two-thirds or three-fourths majority of the council. He is, in truth, the government, and he is held strictly accountable for his own acts and those of his subordinates.

Low, S., in Bryce, 434–439.

Spread of the Brooklyn system.

The Brooklyn charter of 1882 was the first to introduce this "centralized" system. The only officials chosen by the people were the mayor, the controller, and the auditor. All other officials and boards were appointed by the mayor. The example of Brooklyn has been followed to some extent by most of the large cities that have adopted new governments since 1890.

Large number in "non-centralized" cities.

496. **Other Elected Officials.** — As most of our cities are still the "non-centralized" type of government — the one first described in the previous section — we usually find that at municipal elections the list of persons chosen includes a clerk, a treasurer, a tax collector, an assessor, an auditor, an attorney, besides the judges. In general, the duties of these officials correspond to those of similar offices of the county government, though they are apt to be a little broader in scope.

Auditor in "centralized" cities.

In the "centralized" cities the auditor or controller is often the only executive official, besides the mayor, who is elected. He is given more power than the auditor in the non-centralized type, forming, with the mayor, the commissioners of public works, public safety, and health, a board of estimate that has the sole right to introduce financial bills which the council can reject, or amend only by reducing the amount authorized. The appointment of the tax collector, attorney, etc., in such a government is given to the mayor, their terms of office being frequently longer than his.

Recent attempts to classify departments more scientifically.

Cf. Wilcox, *City Gov't*, 193–214.

497. **Administrative Departments.** — Besides the departments, of which the persons just considered are heads, every city has many others for the administration of the law. As administration is so much more important than legislation in cities, the success of the government depends, to a great extent, upon the organization of these departments. Where little attempt has been made to remodel the municipal system according to scientific principles, they are very numerous and in no way related to each other; but in the "centralized" cities some of the departments have been abolished outright or consolidated, while some of those remaining have been made into bureaus of two or three grand departments. At the head of these grand departments stands the department of public works, which includes several bureaus, each of which by itself performs duties of magnitude. Another instance is the department of public safety, which looks after police, fire, and health, and some other functions. If, as is the case in most of these cities, the head of each bureau is fully responsible to the head of his department, while the chiefs of the departments are, in the same way, responsible to the mayor, it is possible to fix the blame for poor service and reward a faithful official as he deserves.

Considerable discussion has been devoted to the usefulness of individuals or boards as heads of departments. Most cities retain boards where deliberation is essential, or have a board to determine the policy of the department and a chief to execute its wishes.

Boards aided by chiefs.

Conkling, *Mun. Gov't*, 64–83.

498. **Police, Fire, and School Departments.** — All of these departments are usually under boards, aided by heads called chiefs or a superintendent. In about ten per cent of our largest cities the police board is appointed and controlled by the state; but the rule is for the council or mayor to select the police and fire boards, but for the people to choose the board of education, usually by wards, though occasionally by a general ticket. The administrative heads are then chosen by the board.

Appointments upon the police, fire, and school forces are also made by the boards in most of the cities, and it is the exception to demand fitness as the sole requirement in appointment or unfitness as the only one for removal. The creation of better systems of civil service is one of the crying needs of city government.

Reform of the civil service in these departments.

499. **The Civil Service.** — So long as administration is almost the sole duty of cities, political opinions are not a necessary qualification of employees for over ninety-five per cent of the positions. Obviously, skill and experience should be desired above all else, and to obtain these we must be prepared to give salaries that will attract ability, and a reasonably permanent tenure to retain it. Until recently civil service reform in the United States has been confined to the national government, so that appointment and promotion solely on merit have been rare in our cities, while a change of almost the whole clerical force in a department has quickly followed the selection of a new head. We have now in a few cities, and in three or four states, civil service boards created for the purpose of giving competitive examinations to applicants for positions, but progress in this direction seems very slow.

Why civil service reform is indispensable for good city government.

500. **Municipal Courts.** — The larger cities invariably have courts whose jurisdiction is restricted to their limits, and which form but a part of the judicial system of the state. Some of the older ones may still hold special corporation courts, which were created long ago in the days when a municipality was a privileged body; but these have practically disappeared. The courts usually have exclusive original jurisdiction of all cases arising under city ordinances, with appeal most of the time to a higher court. They also try petit criminal and civil suits involving state law. The judges are elected by the people of the city for terms varying from one to fourteen years.

Organization and jurisdiction.

Wilcox, *City Gov't*, 214–225.

501. **Two Sets of Functions performed by Cities.** — The work done by cities may be classified under two heads: administrative functions and business functions. It may

Administrative and business functions.

not always be possible to separate those of one set from those of the other, because many functions partake of the nature of both. One characteristic that both classes of functions have in common is the tendency to increase in number and complexity. Half a century ago most of the administrative duties of the present city were performed, if at all, by the individual householders. It is not a great many years since the inhabitants of most cities depended upon outsiders for sprinkling their streets, for care of refuse, for academic education, and for the care of the defective classes. The same thing is true of the business, or, as some term them, the socialistic functions. Where the city undertakes to supply water, gas, or electricity, or to furnish transportation, it does it with the hope of giving better service rather than for the purpose of making profit, though an addition to the sources of the city's revenue is never unwelcome.

Preparing streets for use.

Conkling, *Mun. Gov't*, 111–137.

Maltbie, *Municipal Functions*, 114–126.

502. Care and Protection of the Streets. — Streets are usually laid out under the direction of the council, assisted by the superintendent of streets. The cost is defrayed partly by the people of the adjacent territory and partly by the city. If the owners of the land refuse to sell, it is necessary to resort to the right of eminent domain, which is conferred by the state legislature for this purpose. The case is tried in the suitable court, and if the contention of the city is sustained the value is usually fixed by commissioners appointed by the judge. Once cut through, the street must be graded and, as it comes more into use, paved. The expense of these operations and subsequent care is borne partly or wholly by the adjacent property, except for incidental repairs.

Abuse of street privileges.

It is claimed, too often with just cause, that the contracts let by the city are not well performed: that the city always pays for more than it gets. The city is also careless in allowing private parties and corporations to tear up the streets in order to put in pipes that should have been laid before the pavement was completed; but the most unfor-

tunate part of street management is the way that franchises to railways, water companies, and others have been given away, although they conferred rights which should have brought large sums into the city treasury.

Scope of the police power.

Maltbie, *Mun. Functions*, 42–60.

503. **Police Regulations.** — The police duties of a city cover a field embracing such apparently unrelated subjects as the arrest and detention of criminals, the granting of licenses, building of sewage systems, and a multitude of other functions for the protection of the life, property, and health of the inhabitants. The first of these occupies the police force proper, and its importance increases in geometrical ratio with the growth of the city. Licenses are usually granted by the police board upon fulfilment of the legal requirements, but their enforcement is intrusted to the police force.

The sewage problem.

Maltbie, 126–131.

The problem of sewage disposal is usually a troublous and expensive one. It is customary to have trunk sewers with suitably located outlets, into which many branch sewers empty at different points. The location of such sewer systems calls for the highest engineering skill, great foresight as to future development, and considerable executive ability.

Prevention of spread of disease.

Wilcox, *City Gov't*, 28–32.

Every city has a health officer, who has charge of all cases of infectious diseases and is empowered to use all necessary means to prevent the spread of the disease. In seaboard cities he may find it necessary to quarantine vessels arriving from infected ports. So much more stringent have the rules for the treatment of the whole subject become, that epidemics are no longer to be dreaded as in former times.

Food inspection.

To prevent the sale of unhealthful or forbidden articles of food, inspectors are appointed, who perform a valuable work in preventing dealers from selling tainted or diseased meats, impure milk, etc.

Educative and recreative activities.

504. **Miscellaneous Functions.** — Among other duties performed by most or all cities are certain ones done for the education or pleasure of the public. The establishment of free high schools, technical schools for manual training,

Maltbie, 98–113.

free libraries, and art galleries are illustrations. Breathing places, in the form of squares in the centres of dense populations, or large parks in the suburbs, are now thought indispensable for a city of prominence. A very few furnish museums or public baths.

Municipal ownership of water works.

Parsons, *City for People*, 203, 204.

Maltbie, 125–127.

505. **Water Supply.** — Among the business functions undertaken by American municipalities, that connected with the city's supply of water is the most universal. Less than twenty per cent of large cities are now dependent upon private companies, some of these having the right to purchase the whole property at the expiration of the present contract. Public ownership has, almost without exception, been more satisfactory than corporation service, and represents a saving to the cities and the inhabitants.

Success of municipal ownership.

One reason for this success is, in all probability, the insignificant expense of operation. The first cost, however, is great, as the water is usually brought from a distance, enormous storage reservoirs are required, and an extensive network of street pipes must be laid. Bonds are issued for the payment of the amount, the interest charges and running expenses being more than met by the income from water used by individuals and business companies.

Increase of electric plants.

Maltbie, 159, 160.

506. **Gas and Electric Lighting.** — Except in small places, very little has been invested by the municipality for gas or electric plants, the latter being much more common than the former. The greater cost of operation, the lesser need of a pure supply, and the state constitutional limitations upon the amount a city may put into public works, all have a deterring effect. Many of the cities that have electric light works furnish both the inhabitants and the streets with light, but most manufacture exclusively for the city's use. Though they have been tried but a short time, municipal ownership seems to have been a success.

But four cities with a population of over 25,000 each had public gas works in 1900, and only a few small ones; but of the cities with 5000 inhabitants nearly 100 had electric plants and 300 others furnished their own electric lights.

507. Miscellaneous Business Enterprises. — Some cities have for years owned docks, wharves, and other harbor and river facilities. New York is constantly expending vast sums to improve her water front, to which she has held the title for nearly two centuries. Her docks not only pay a good interest on the money expended, but have been of incalculable value in increasing the commerce of the port. Ownership of docks and wharves,

A few municipalities have built railroads outside of their own borders, but lease them to private corporations. Strange as it may seem, none except Boston and New York have yet constructed street railways or subways, though the advantages of municipal ownership with proper business management are pronounced, both because in our cities transportation to the suburbs is indispensable, and because the streets must be kept as far as possible free from the control of private parties. of railroads,

A few cities have municipal lodging-houses for unfortunate workmen, and a small number have tried experiments with farms upon which to give employment to those out of work. When properly managed, these serve the double purpose of benefiting worthy persons and keeping the city free from tramps and loafers. of lodging-houses.

508. The Granting of Franchises. — As public ownership has made so little progress in this country, the granting to corporations of franchises giving the right to supply water, gas, electricity, transportation, or other necessaries becomes so much the more important. Franchises are usually granted either by the city council or the state legislature. If by the former, the conditions under which a franchise is possible are described in the charter, and may be enlarged by a separate state law. It has been customary to give franchises for long periods without requiring anything in return; then, as population has increased, the privileges conferred by the franchise have become of enormous value. So often has this happened that cities are now endeavoring to protect themselves by restricting the time for which franchises are granted to fifteen or twenty years, requiring sale of franchises to the highest responsible bidder, and prescribing a minimum per cent of the gross receipts obtained from the business permitted, which shall be paid into the city treasury. Where these limitations have not existed, there Serious defects only partially remedied.

has often been more or less corruption among the councilmen who have favored giving the franchise for nothing. On the whole, it must be said that our municipalities have not conducted this part of their business with economy, and that the unfortunate reputation for municipal misgovernment that we have abroad is justified by the facts.

Importance of municipal finance.

Wilcox, *City Gov't*, 53–61.

509. **Municipal Finance; Sources of Revenue.** — Financial questions are relatively much more important in cities than in the states or the nation. A larger proportion of its duties involves the payment of money than in either of the others, while its *per capita* expenditures are six times those of the states, and nearly double those of the nation.

General property tax and other forms of income.

The chief source of revenue is the general property tax (§§ 587–590) levied upon all real estate and, presumably, all forms of personal property. This furnishes about one-half of the total income. The rest is made up chiefly of licenses issued to liquor saloons and various other kinds of business, fees paid for work done on papers, issued by the city, fines paid by persons violating laws or ordinances, amounts due from corporations for franchises, and water, gas, or electric charges for whatever may be supplied by the city's plant. Large sums are also raised by special assessment upon property owners for improvements made in the immediate neighborhood.

The city has no inherent right of taxation, that exercised being derived from the state constitution or legislature. In former years the power to levy taxes was frequently given only from year to year; but almost everywhere it is now conferred by general law.

Expenditures for schools, streets, police, etc.

510. **Items of Expense.** — More is spent for the public schools than for anything else, averaging about one-sixth of the whole expenditure. The amounts assigned the street, police, fire, and lighting departments are all large. The pay of regular officials and their assistants is usually but little smaller than those just mentioned. As the city always owes a debt, and usually a large one, the interest account

always has to be considered among the principal items. In cases of municipal ownership the expenses of operation must be included, while the wiser cities lay aside a sinking fund to replace the machinery and buildings as repairs are needed.

Indebtedness and investments.

Conkling, *Mun. Gov't*, 168–173.

511. **Municipal Debts.** — We think of the national debt as being very heavy, but it is much smaller in proportion to the wealth of the country than the city debts in proportion to the value of their property. However, a large part of the municipal indebtedness is in the form of investment, principally for water works; while a still larger part was spent for public buildings, like city halls, schoolhouses, jails, and fire engine houses. Although a great deal of the money borrowed, as well as that raised by taxes, has been wasted, the value of the city's property in most cases is greater than the whole debt, so that the debt may represent a saving to the city of rentals equal to the amount of interest.

Constitutional limitations on indebtedness.

Wilcox, *City Gov't*, 89–91.

Almost all states prohibit the increase of city debts beyond ten or in some cases five per cent of the assessed value of the property in the city. As stated above, water-works bonds are not counted. Where a city desires to undertake any municipal enterprise, such as electric lighting, erection of docks, or construction of a street railway system, such a limitation is an almost insuperable barrier, and one which, if municipal home rule is desirable, should be so altered as to allow the people to invest in what they see fit.

Inadvisability of property qualifications.

Goodnow, *Mun. Problems*, 145–151.

512. **Reform through Restrictions of the Suffrage.** — Among the methods suggested for improvement of the city finances, and indirectly for the reform of the city government, is one that suggests a sweeping change in the right of suffrage in all matters where money is directly involved. It is proposed to have at least all purely financial officials elected by taxpayers or persons paying a fairly large rental, and to keep the finances in the hands of the representatives of these persons. However reasonable such a proposition may seem, the practical difficulties appear insurmountable. Without a complete reorganization of the city government upon entirely new lines, it would not be possible to sepa-

rate financial questions from others, if, indeed, it could be done at all. To introduce a tax-paying or rental qualification for city voters, while national and state elections are open to all citizens, is scarcely to be thought of at present. It is possible that the referendum, which is now used in certain cities to obtain the consent of the voters before money is borrowed, contracts are made, or franchises are granted, may open the way to a suffrage for persons with money interests only; but immediate reform through restriction of the suffrage seems out of the question.

Need of permanently organized reform movements.

513. **Municipal Reform through Popular Interest.** — The first step toward reform is really much simpler. It consists in arousing and organizing the best elements of the cities in order to insure the election of capable and honest men, and to keep in close touch with the work of the city. The municipality has very little to do with political policies, and nothing whatever with those policies that separate the nation into two great political parties. It is taken up with an immense amount of administrative detail, the proper performance of which constitutes the chief feature of good municipal government, but which is almost wholly lacking in general interest. An extra effort is therefore required to keep posted on how the city departments are doing the work, — but an effort which European experience shows is worth much more than it costs.

Need of separating state and municipal elections.

514. **City and State Elections.** — As the city has so little interest in national and state issues, election of city officials upon party lines is an almost unmixed evil. But as the party organizations are practically the only ones, besides the goverment itself, that exist within the city for political purposes, it has been found impossible to have a non-partisan municipal election at the same time that state officials and congressmen are chosen. To remedy this defect separate municipal elections are being held, which render independent action easier, though they cannot keep the powerful party machinery from constituting the most important factor in the elections. But non-partisan move-

ments have been so strong, both East and West, that party nominations in separate elections have lost much of their offensive character. Whether results are to be permanent depends upon the earnestness and effective organization of the citizens.

Nature of the home rule needed.

Rowe, L. S., in *Mun. Program*, 157–173.

515. **Municipal Home Rule.** — The reform in the organization of the city government and in the relation of the city to the state is the most fundamental of all. The author believes the second should precede the first. There must be a clearer definition of the exact field of municipal duties. We need a better separation of the duties that affect the city almost exclusively from those which the city government performs, because it is a part of the government of the state; more liberty for the city in the first sphere of action, *i.e.* municipal home rule, and better control by state authorities of the administration of state law within the city. The ultimate form of the governmental organization is as yet too deeply imbedded in the future; yet it seems safe to predict it will include both enlarged powers for the city council and a considerable amount of executive centralization.

QUESTIONS AND REFERENCES

General (§§ 488–492)

a. In *Municipal Problems*, Goodnow treats the relation of the American city to the state (22–89), the English system of municipal control (111–144), and the administrative control on the continent (90–110). See also Wilcox, *City Government*, 72–114.

b. The general character of municipal government in England is given by Shaw, *Municipal Government in Great Britain*, 30–37; in France, in his *Municipal Government in Continental Europe*, 165–185; of German cities, *ibid.*, 306–322.

1. Compare the position of the American city with that of the European. In what respects has it more liberty of action? In what less?

2. Is it true that a city is nothing but a business corporation, or is it more of a public corporation existing for purpose of government?

3. What are the objections to having charters adopted by the cities without ratification by the legislature? Why ought both the city and the legislature to have something to do with charter-making?

i. What was the population of your city at the last census? What the per cent of growth during the previous decade? What per cent were foreign born? Native born, of foreign parentage? From what countries have most of these come? What is the area of your city?

ii. What date does your present charter bear? How was it obtained? Did any prominent citizens have anything to do with it? Does it give the legislature any right to appoint a police board or other officials or to remove any? May the legislature alter it at will? May the legislature grant franchises or directly control expenditures under it?

Government (§§ 493–500)

a. For purposes of comparison the following frames of government may be considered: in *Conferences for Good City Government* (1894–1895), on "Minneapolis," 93–104; "Milwaukee," 119–124; "New Orleans," 407–417; *ibid.* (1896), on "Pittsburg," 146–161; A. Shaw, on "St. Louis," in *Century*, LII (1896), 253 *et seq.*, and on "San Francisco," *R. of R.*, XIX (1899), 569–575; Bugbee, on "Boston," in *J. H. U. S.*, V, 116–126; S. Low, on "Brooklyn," in Bryce, 434–439.

b. Compare the American mayor with the heads of European cities as given by Shaw, *Municipal Government in Great Britain*, 58–63; Shaw, *Municipal Government in Continental Europe*, on "French Mayor," 172–180; on "German Burgomaster," 313–315, 317–320.

1. Why is concentration of power in the hands of the mayor believed to give better government? Is there any present instance of real council government in the United States? in England? on the continent? If so, is it successful?

2. Summarize carefully the advantages of election by the city at large. To what kinds of bodies may it be applied? Is it advisable to choose part of a council on a general ticket and part by wards?

i. How many members in your council? When and for what term are they elected? By what method. — general ticket, or ward? Are its powers enumerated? What are the principal ones exercised? What is the reputation of the council for ability and integrity?

ii. Is power centralized in the hands of the mayor? What is his term? his salary? Whom does he appoint? May he be removed? If so, how? Have your mayors been among the best men of the city? What official positions did the present mayor occupy before election?

iii. What officials or boards are elected by the voters? Do you have the board or individual system for departments? How is the responsibility enforced? How are teachers appointed? removed? Have you any civil service rule? To what extent is it the custom to change the appointed forces with each administration?

Functions and Finance (§§ 501–511)

a. Maltbie, *Municipal Functions*, summarizes the municipal efforts to furnish gas and electricity, 155–162. For fuller treatment, see Shaw, *Great Britain*, 199–203; *Continental Europe*, on "Paris," 45–54, and on "German Cities," 346–350. American experience is given in Bemis, *Municipal Monopolies*, chaps. II, III, VIII.

1. To whom do the streets belong? Has any one a right to grant perpetual franchises upon them? In what kinds of cities is it most necessary that the life of franchises be short? Do most American cities belong to this class?

2. Is not public ownership naturally desirable? Why has Europe gone farther than we in municipal enterprises? What characteristics of our city government hinder a great extension of municipal functions? How can these last be remedied?

3. How do American compare with European cities in cost of government? sources of revenue? amount of debt? and efficiency of service?

i. Who has the power to lay out your streets? What percentage of the cutting through, of grading, of care, is paid by the abutting property? Do the car companies of your city pay for paving part of the streets on which they run? What part?

ii. How does your water supply compare in quality and price with that of other cities of the same size? Does the city own the water plant? If so, when was it bought or completed? What did it cost? What is the sum total of the interest or investment, payment for salaries, cost of replacing worn out materials, and other running expenses? Does it equal or exceed the income from water rates? What was spent last year for new lines of pipes and other forms of investment?

iii. By what authority are franchises granted? Is there a legal maximum time limit on them? Is there a minimum per cent for railways? What has been the experience in the past regarding the sale of franchises?

iv. What is the assessed valuation of city property? the rate? the total tax levy? the whole amount of revenue from all sources? Give

the sums spent for schools, lighting, police, fire department, interest, etc. What is the debt of the city? What per cent of interest does most of it bear? What is the value of all city property, and of what does it consist? (Finance Reports.)

Municipal Reform (§§ 512–515)

1. In what ways may universal suffrage be said to be responsible for the evils of city government? What are the principal objections to a property or rental qualification for voters?

2. Show why the influence of political parties upon management of city affairs has not been good. Is independence of the parties possible? Why are cities rather than counties and states subject to "ring" rule?

3. In what does municipal home rule consist? Give a few facts which show that we do not have home rule now. How can it be obtained?

PART III

POLICIES AND PROBLEMS

CHAPTER XXII

SUFFRAGE AND ELECTIONS

General References

Cleveland, *Growth of Democracy*, 128–156, 285–306, 394–411. Historical and critical.

Colby, J. F., in Lalor, under "Suffrage."

Haynes, "Qualifications for Suffrage" (*P. S. Q.*), XIII, 495–512.

State Constitutions, article on "Suffrage and Elections."

Political Codes, under Elections.

Commons, *Proportional Representation*. The best book on the subject.

Parsons, *The City for the People* 255–386, 474–504. Favors initiative and referendum.

Cree, *Direct Legislation*.

Oberholtzer, *The Referendum in America* (the second book of that name). A judicious and scholarly book.

Periodical literature, indexes under Suffrage, Franchise, Elections, Ballot Reform, Australian Ballot, Corrupt Practices, Proportional Representation, Initiative, Referendum, Direct Legislation, etc. See also United States.

516. Historical Changes in the Suffrage. — No other subject of state activity has so influenced the history of our country as the suffrage. Some of the changes have been mentioned in Part I, but we may distinguish certain steps in the evolution of the manhood suffrage of the present day.

Colby, J. F., in Lalor, III.

Thorpe, F. N., in *Harper's* XCIV (1897), 207–215.

(1) During the seventeenth century there existed a very

Cf. Appendix F, Table I.

decided lack of uniformity in the franchise requirements of the different colonies. In some parts of the country every white male adult had the right to vote, but the right was little used. In other parts property was the basis of the suffrage, and in the North religious qualifications were the only important ones.

The seventeenth century.

The eighteenth century.

(2) Before the eighteenth century most of these differences had disappeared, and in all of the colonies the man with land of a certain value or extent was the only voter. The example of England and the pressure brought to bear by the English government account for the new condition of affairs.

From 1775 to 1825.

(3) The half century subsequent to the Revolutionary War witnessed the breaking down of these barriers of property, and the substitution of citizen suffrage in the newer states and of taxpayers' suffrage in the older.

From 1825 to 1870.

(4) Extensions of the elective franchise occurred with even greater rapidity for the next forty years. Residence was really the only thing demanded in a large part of the West, and some of the less conservative sections admitted aliens who expected to become naturalized on an equal footing with citizens. At the close of this period the nation, as a whole, by the fifteenth amendment (1870), made it obligatory for all of the states to grant negroes the right to vote on the same terms as the whites.

Since 1870.

(5) Since 1870 great progress has been made in placing suffrage upon a safer basis. Citizenship has become a more universal requirement, with a tendency to demand that no person shall be allowed to vote if naturalized within a certain time before election. The list of persons disqualified because intellectually or otherwise incompetent grows longer year by year, an especial effort being made in the South to exclude the least fitted blacks without violating the national Constitution. At the same time discriminations regarding sex are less pronounced, the standards for women, when they are allowed to vote, being the same as those for men.

517. Condition of the Suffrage at Present; Citizenship and Residence. — It must be continually borne in mind that the elective franchise is not a right of citizenship, but a political privilege conferred upon individuals by the states, within limitations that may be prescribed by the nation. Just as the states allow aliens to hold and dispose of property, to sue and to be sued, to act as jurors, and do many other things that really belong only to citizens, so they have in many cases permitted foreigners to help in the selection of public servants. As the character of the immigrants to this country has changed during the last fifteen years, the dangers arising from this course have been more evident and have aroused the people to exclude aliens from voting, so that now in but twelve states can persons who have declared their intention to become citizens vote on any question.

Alien voters.

Ford, *Amer. Citizen's Manual*, 85–91.

Lyman, J.C., in *N. A. R.*, 144 (1887), 298–306.

Haynes, in *P. S. Q.*, XIII (1898), 495–512.

Every state makes a certain period of residence a prerequisite to voting. This is usually one year within the state, but may be as high as two years or as low as six months. Maine, in fact, requires but three months, but demands the same period within the town as for the state at large. Most of the other states have residence qualifications for counties, towns, and precincts, in order that voters may be reasonably familiar with local interests, and that election officials may have opportunity to prevent fraud.

Residence requirements.

518. Special Restrictions. — As good government is impossible without intelligence on the part of the voting population, tests of educational fitness have been applied in a constantly increasing number of states. Connecticut led the way, in 1855, by insisting upon ability to read or write. Massachusetts followed, two years later, by barring out those who could not read or write in English. Her example has been followed by California, Maine, Wyoming, Delaware, and Connecticut. Mississippi, in 1890, provided that if a man could neither read the constitution nor understand it when read, he could not vote. South Caro-

Educational or property tests.

Oberholtzer, *Referendum*, 120–125.

Cf. Appendix F, Table II.

Bruce, *Rise of New South*, 447–453.

lina, five years later, adopted the Mississippi method, but did not deprive those who owned property assessed for at least $300, even when they were not intellectually qualified. Louisiana (1898) and Alabama (1901) embodied in their constitutions provisions similar to those of South Carolina. Georgia (1908) did the same. North Carolina (1900) and Virginia (1902) excluded those who could not read or write in English, but all of those southern states except the first two exempt most native and alien whites from the tests. The educational test, though far from perfect, is the best one yet devised.

Tax qualifications.

Many of the states do not allow people to vote who have failed to pay taxes assessed upon them. A few permit only property owners to decide questions involving finance; but, since Rhode Island abolished her qualification of $134, in 1888, property qualifications, as such, have not existed. The attempt to apply satisfactory tax requirements so as to debar citizens who lack interest in affairs of state, has been a little difficult for this reason: political parties have gladly paid the delinquent tax in return for continual allegiance, and the provision has thus often worked for worse, instead of better, government.

Common disqualifications. Cf. Appendix F, Table II.

The most common disqualifications are mental incompetence and conviction without pardon for an infamous crime. A few states debar inmates of public institutions, especially in local elections.

Woman suffrage in state and local elections.

Sumner, *Equal Suffrage*, 1–5, 211–213, 258–260.

Bliss (ed.), *New Encyc. of Social Reform*, 1295–1303.

519. **Woman Suffrage.** — During the last half century a notable work has been done by active and well-organized forces to obtain greater justice for women in the courts and recognition at the polls. There is scarcely a state which has not at some time submitted to the people a constitutional amendment giving women the same voting rights as men. These efforts have produced results of two kinds: (1) In twenty-two states a limited suffrage has been granted, covering usually school and library elections, but in Kansas including all those in cities as well. (2) Five states make no distinction whatever between men and women as elec-

tors: Wyoming, which has had woman suffrage since 1870, Colorado (1893), Utah (1895), and Idaho (1896).

In elections and direct legislation.

520. **Improved and Suggested Means of ascertaining the Popular Will.** — Not only has there been a decided tendency toward placing the suffrage upon a more substantial basis, but what was equally necessary, laws have been passed for the purpose of registering more accurately the wishes of the people. These cover almost the whole field of elections, including the registration of voters, the ballot, qualifications of candidates, with checks upon them to prevent the use of money for corrupt purposes. They go farther and seek to perfect means of expressing the popular will. Proportional and minority representation have been proposed and, to some extent, used to limit the undue power of majorities. The referendum and the initiative have been extended to permit voters to express their preferences directly upon different parts of legislation. A beginning has also been made in the control exercised over political parties, especially in connection with primary elections, but incidentally for the purpose of obtaining better nominations.

Registration.

521. **Preëlection Requirements.** — Almost all of the states now require registration of the voters a definite time before each election, at least in the larger cities. The need of having a list of voters, which might serve to prevent double voting, was especially manifest in those cities where population was particularly dense. As the election officers could not be acquainted with a large proportion of the voters, it was possible for men to vote in more than one precinct without being easily detected. Under a strict registration law proofs of naturalization are always required, and no person can register in more than one place with impunity. Naturally, he can vote only in the precinct where he resides, and there is no difficulty in preventing his voting more than once at the polling booth.

Primaries.

The reform of elections is interwoven with the control of primaries and the subsequent influence upon party nomina-

tions. The discussion of this all-important subject is postponed because it properly belongs to the control of parties (§§ 549–551).

Qualifications for office.

Stimson, *Amer. Statute Law*, I, §§ 220–223.

Qualifications of office-holders elected by the people are prescribed by many state constitutions, but there is little uniformity in the requirements throughout the country, except in forbidding any person to hold two positions of profit.

History of the ballot.

Spofford, A. R., in Lalor, I, 197–199.

522. **The Ballot.** — For half a century voting by ballot has been practically universal in the United States. Virginia and Kentucky were the last states to discard the older form of *viva voce* voting, the latter within a few years. The ballot was first introduced in the Puritan colonies in the seventeenth century, and at the time of the Revolutionary War was in use in more than one-half of the states. It was gradually adopted by all of the others, but until recently was very imperfect in form. Separate ballots were usually printed for each party, there being no special uniformity and practically no state supervision. The ballots were deposited in boxes which might be kept by the election officers where they pleased. There were few safeguards to prohibit a person from voting "early and often," so that "stuffing" the ballot box and altering the returns were common to an extent almost incomprehensible to-day. As party workers were allowed to come into the polling places with voters, they had little difficulty in ascertaining which way the man voted. Intimidation was therefore common, and bribery was considered as a matter of course in all close elections. So great was the need of change that it is surprising that the abuses were endured so long, but the avidity with which the states adopted ballot reform within the closing decade of the nineteenth century shows that everywhere the times were ripe for improvement.

Introduction of the Australian ballot.

523. **Ballot Reform.** — A modification of the ballot used in Australia has been adopted by practically all of the states. It was introduced first in Massachusetts, in 1888, and proved so satisfactory that the popular demand for it

was irresistible. All of the names of candidates appear upon a single large sheet, which is printed by proper authorities. Copies of this are usually distributed to the voters before election so that they may become familiar with all of the persons nominated for office. The names are arranged in one of two ways: (1) All of the candidates for each office are grouped together, with a blank square left after each name. The voter indicates his choice by making a cross in the space opposite the name of the one for whom he wishes to vote. If he marks two names for one office, he loses his vote, as he does if he fails to place a cross opposite any name. (2) All of the nominees of each party are placed in a column by themselves, a blank space being left after each name and at the head of the column. If the voter desires to vote a "straight ticket," *i.e.* for members of one party only, he places the cross opposite the name of the party, otherwise he must mark the individuals of his choice. It is perfectly evident that the second method makes it easier to vote a strict party ticket.

Wigmore, *Australian Ballot*, 23–73.

524. **Polling the Votes.** — The polling places are selected by the authorities; and election officials, including usually clerks to keep records of the persons voting, and judges and inspectors to take charge of the polls, are all chosen according to law. Each party is permitted to have "watchers," who are allowed to be present when the votes are cast and counted, and who may challenge any voter. Where proper regulations have been adopted, no partisan worker is allowed to remain within a certain distance of the polls, so that it is difficult to control any voter directly.

How votes are cast, counted, and canvassed.

Ford, *Amer. Citizen's Manual*, 100–112.

The voter gives his name to a clerk, who looks it up in the register while others record the name and address and the number of the ballot given the voter. In a small booth, perfectly secluded, the persons of the voter's choice are indicated, the ballot is folded, and then handed to another official, who first tears off the number and calls it out so that the recording clerks may note that the person has

voted, then deposits the ballot in the box prepared for it. The polls are usually open from sunrise to sunset or from 6 A.M. to 6 P.M., but never for more than one day. When they are declared closed, the inspectors count the votes and send the announcement of the vote, with the ballots, to the proper authorities. These announcements are called the unofficial vote. The ballots are afterward counted, or canvassed, by designated state or county officials, and then the official vote is given out sometime after the election.

Attempted prevention of bribery and corruption.

Cf. McCook, J. J., on *Venal Voting*, in *Forum*, XIV (1892).

525. **"Corrupt Practices" Acts.** — Unless bribery can be prevented, all regulations are useless. One object of changes in the ballot and election laws has been to reduce the opportunities for buying votes, and to make their sale unprofitable. Some states have gone farther, and require all candidates to make, under oath, an itemized account of all moneys expended by them in connection with the campaign. The futility of these provisions to attain the end intended is acknowledged on all sides. So long as practically all of the campaign expenses are borne by the various party committees (§§ 542–545), and these committees are not obliged to show for what the money was expended, the result cannot be satisfactory. If suitable laws can be enforced, it will mean a very great gain for good government; but the control of the financial affairs of the political parties is a task of no little difficulty.

Justice of proportional representation.

Commons, *Prop. Representation*, 86–98.

526. **Plans actually used for Minority Representation.** — The end in view in the adoption of the election safeguards just mentioned is "a fair ballot and an honest count"; but a reform more radical in its attempt to give a truer representation is that embodied in what is known as proportional representation. The injustice of compelling good-sized minorities year after year to be without a fair representation in the government, and perhaps without any, or possibly without the prospect of obtaining any, should appeal to the average American as in opposition to the spirit, if not the form, of our institutions. Nevertheless, little use

has been made of any plans for representation of different political views in proportion to numbers of those holding them, although many such plans have been suggested.

The limited vote.

To a limited extent the "cumulative" vote and the "limited" vote have been adopted. The limited vote is used in the following way: if there are eight members of a board of education to be elected on a general ticket, *i.e.* by the city at large, then, by the limited vote method, each voter may cast his ballot for five, but no more. In practice this has led each party to nominate only five candidates, the majority party electing its five and the minority party the three highest on its ticket; but the voter has been able to choose from only ten names for eight positions, unless independent candidates are in the field, so that the character of the nominations has not been improved.

The cumulative vote.

The cumulative vote also requires a district large enough so that several persons are elected from it. Each voter has as many votes as there are offices to be filled, and he may cast all of these for one person or for different persons, as he likes. This is the Illinois method already described (§ 281). The principal objection to it is that the minority party is often able to choose a majority of the representatives, because some candidates are sure to have a good many more votes than they need, and these are wasted.

Prof. Commons's plan.

527. **Improved Proportional Representation.** — Other plans, theoretically more perfect, are so complicated that they are practically useless. The one which seems most likely to prove satisfactory uses the cumulative vote, but combines other features with it. Each party nominates a ticket of candidates equal in number to the offices to be filled or a less number. Independent tickets are also permitted. The elector has as many votes as there are positions, and he may place those where he pleases, cumulating them or not as he prefers. When the ballots are counted, the total vote cast for all the candidates is divided by the number of offices, and the resulting quotient gives the number of voters that will elect one candidate on the average. This

Commons, *Prop. Representation*, 105–114.

Cf. Goodnow, *Municipal Problems*, 154–167.

quotient is divided into the whole vote cast for each ticket, and the number of representatives to which each ticket is entitled is thus obtained. Those standing highest on each ticket which is entitled to representatives are elected, the number of representatives of course depending on the ticket's vote.

Use with constitutions, state and local laws.

Cleveland, *Democracy*, 177–190, 210–241.

528. **The Referendum.** — The referendum, or popular ratification of laws, has existed, in some form, within the United States since the period of the Revolution. It was at first restricted to constitutions, with constitutional amendments added but little later. Before 1840 it had been introduced in connection with certain local laws passed by the state legislature, which became valid if approved by a specified per cent of the voters in the district to which the law applied. For example, the vote of a county may be necessary upon such subjects as the division into two or more counties, location of the county seat, the sale of bonds for various objects, and upon the sale of liquor. In many states cities are never incorporated without popular vote, nor are districts annexed to a city without their consent. More and more the city councils are being restricted in the appropriation or borrowing of money, unless they have first called special elections and obtained the consent of the voters. In 1909 twenty per cent of the states permitted the voters to use the referendum for state laws and the number is increasing constantly.

Rarely, if ever, does the vote on any question affecting state constitutions, charters, or local laws equal that for the choice of officials at the same elections, and usually from one-quarter to three-fourths of the voters fail to record their preferences.

Limited use of the initiative.

Parsons, *City for People*, 279–283.

529. **The Initiative and the Recall.** — The initiative is the right of a certain portion of the voting population to propose laws. There are two forms in this country: the one little more than a petition by which the legislative body is compelled to act upon some subject desired by the people; the other demanding a vote, not of the legislature, but of the

people, upon the proposed measure. By the second, or Swiss, method, the legislature simply submits the measure to popular vote. Like the referendum, the initiative is the natural, almost inevitable, product of democracy, and comes nearer to giving government by the people than anything outside of the town meeting yet tested. An early instance of its use is furnished in the method of amending the first constitution of Georgia (1777). This could be done only by a convention called on petition from a majority of the voters in a majority of the counties. But the initiative has not thrived like the referendum, and is in use comparatively little at the present time, although in 1909 seven of the western states permitted their voters to propose state laws. Oregon is the only state that has made a real trial of the process for state legislation, but in that state it has been very satisfactory because of popular interest. Many cities use the initiative for proposing ordinances and charter amendments, while the petition initiative has been used for generations in connection with local government.

Oberholtzer, *Referendum*, 383–589.

Lobinger, C., in *Pol. Sc. Quar.*, 23 (1908), 577–586.

A comparatively new method of forcing elected officials to observe the wishes of their constituents is the "recall." When an official has failed to do as his people wished, the recall permits a certain percentage of the voters in his district to ask for another election in which the incumbent must compete on equal terms with other candidates if he wishes to retain his position for the remainder of the term for which he was elected originally. The recall has not been adopted extensively, but is an effective although rather dangerous instrument for enforcing responsibility. The problem would be less serious than it is, if more care and interest were taken in selecting officials.

The recall.

Schaffner, M. A., in *Pol. Sc. Rev.*, 2 (1907), 39–41.

530. Advantages of Direct Legislation. — The indirect influence of the referendum can only be imperfectly estimated, but it has certainly acted as a serious check upon constitutional conventions and more permanent legislative bodies. Moreover, it has educated the people concerning the nature of our political institutions, because they are

Referendum as a check on representatives of people.

Parsons, *City for People*, 275–278, 362–370.

more interested in those things in which they take part. When used for local affairs it guarantees local autonomy under general state laws which assure a certain necessary degree of uniformity. So long as it acts in this way as a conservative force, dealing solely with matters of importance, it possesses a marked value for both the people and the government.

Referendum in financial matters.

Where it takes the final decision on matters of finance out of the hands of county boards, city councils, or boards of public works, it effectually prevents the official corruption which has become so common in these days. If the granting of franchises is always subject to popular vote, there is less danger that corporations can influence the government to their own advantage. Until we shall reach that desirable condition where not even a fair proportion of our representatives "have their price," popular participation directly in the affairs of the government, whether for city finance or senatorial elections, will be sought as the great remedy for political ills.

Good influence of the initiative.

The initiative gives opportunity to force legislative assemblies to respect public wishes, for it may demand a popular vote on the subject presented. The introduction of measures in all our legislatures is comparatively easy, though after introduction it is difficult to compel consideration; but the very existence of a means to pass laws without consulting the legislature makes that body chary of ignoring bills that are likely to become laws through the initiative and the referendum. To protect its own powers and preserve its dignity, the assembly is therefore likely to itself approve bills that the people desire. For this reason it becomes a more truly representative organization.

Law-making requires special training.

531. **Disadvantages of Direct Legislation.** — There is a vast difference between the referendum and the initiative as popular checks upon the government and as means of actual legislation. The business of government, like any other business, requires full knowledge, careful training, and wide experience. There are certain features of it that

every adult citizen ought to understand, but to expect that each one is fitted to properly perform the duties of law-making is more than unreasonable — it is ridiculous.

Lowell, A. L., in *At. Mo.*, LXXIII (1894), 520–526.

The whole number of electors may be able to pass judgment upon some questions, but the rest should be left to trained public servants. If this is not done, the law will lose in unity and in character just in proportion as it becomes popular.

Direct legislation leads to poorer legislatures.

A second defect is closely connected with the first. When the functions of government are assumed by the people, and less dependence is placed on the legislatures, less and less care is taken to secure suitable persons to make the laws. The truth of this statement is shown in the composition of our state legislatures and city councils, both of which have been shorn of many powers during the last half century. An extension of direct legislation will aggravate these evils, already serious.

QUESTIONS AND REFERENCES

The Suffrage (§§ 516–519)

a. Follow the changes in the qualifications for voters in England during the nineteenth century by consulting Wilson, *The State*, §§ 894-900, 962, 992; Rose, *Rise of Democracy*, 49, 178–180, 200–210; Fielden, *Constitutional History*, 131–135; Taylor, *English Constitution*, II, 527–538.

1. Is it a modern political doctrine in the United States that adult men have an inalienable right to vote? Why are the voters as a whole always opposed to an extension or restriction of the suffrage? Prove from history whether changes have been brought about principally by agitation from without or feeling within the ranks of the voters; and if at any time within, why the change was desired.

2. Compare the advantages of property, religious, educational, or other tests with those of manhood suffrage.

3. Give arguments for and against woman suffrage. In ascertaining whether women should be given the franchise, should a vote of the women not be taken? Is it probable that any or many of the adverse majorities of the past would have been reversed by such a proceeding if the women's vote had been binding?

i. What amount of property or land was ordinarily required in colonial times? When did the abolition of property tests begin and in what state? What ones had adopted manhood suffrage by 1815? by 1860? Appendix F, Table I.

ii. What state has the most liberal provisions for voters? What one the most restrictions? Where are the states located that permit prospective citizens to vote? How many ask the prepayment of taxes?

iii. What was the suffrage provision of your first constitution? Trace the changes from then to the present. Who may vote in your state now? Who are expressly disqualified? (State Constitution.) What percentage of the qualified electors failed to vote on the last presidential election? the latest local one?

Control of Elections (§§ 520–525)

1. Would there be any advantage of holding national elections on different days for different parts of the country? Why should they be restricted to a single day?

2. Should an election board ever be composed entirely of a single party? If so, why? Are there any reasonable objections to compelling campaign committees to report their expenses? to restricting the amount they may spend?

i. When was a reform ballot introduced in your state? What is the form used? How may nominations be made under it? Are complaints of abuse common?

ii. In what precinct do you live? How large is it? How many voters does it contain? Where is the usual polling place? Have ballot machines ever been tried?

Proportional Representation (§§ 526–527)

1. Can we have proportional representation without election upon a general ticket? Would election of representatives in the House of Representatives or in either branch of the state legislature be as satisfactory by large districts each of which choose several members as the present method seems to be? Are the greatest difficulties in introducing proportional representation theoretical or practical, and what are they?

2. Would not proportional representation lead to better government even if the character of the candidates was not greatly improved? Name at least two reasons why the tendency would be to get better men.

Direct Legislation (§§ 528–531)

a. On the future of democracy, compare the views given by Macy, J. "Twentieth Century Democracy," in *P. S. Q.*, XIII (1898), 514 *et seq.*; Vrooman, C., "Democracy of Twentieth Century," in *Arena*, XXII (1899), 584 *et seq.*; Godkin, *Problems of Modern Democracy*, 275–310; Giddings, *Democracy and Empire*, 197–214; Hyslop, *Democracy.*

1. Will the referendum be more or less used in the future? Why? Is it desirable that we should have more democratic government than at present?

2. Can direct legislation be applied to national affairs? If so, to what extent? Should the referendum be used in amending the national Constitution? If the referendum and the initiative were used in the cabinet form of government to keep the government in constant touch with the voters, what would be the probable effect in England?

i. What forms of the referendum have you in connection with state affairs? Are the voters consulted in changing county lines? county seats? incorporating villages? What laws regarding finance are first approved by them? What other laws, county or local? Is the initiative in use for any purpose whatever? Is it the Swiss initiative with compulsory referendum?

CHAPTER XXIII

THE POLITICAL PARTY

General References

Willoughby, *Rights and Duties of American Citizenship*, 297–310. An excellent summary.

Bryce, *The American Commonwealth* (abd. ed.), 447–477; third regular edition, II, 1–246. The latter a description of its actual workings, with keen criticisms.

Dallinger, *Nominations for Elective Office*. Gives the history of nominating conventions, methods at present, defects of the system, and proposed remedies, with bibliography. Very valuable.

Remsen, *Primary Elections*. A good brief presentation of the whole party system.

Lawton, *The American Caucus System*.

The historical side is emphasized in

Patton, *Political Parties in the United States*. Discursive.

Tyler, *Parties and Patronage*.

Stanwood, *A History of the Presidency*. Issues and platforms in each presidential campaign.

McKee, *National Conventions and Party Platforms*. Documents only.

Hopkins, *History of Political Parties*.

Johnston, *American Politics*. The work of the different Congresses.

McClure, *Our Presidents, and How We Make Them*. Largely personal reminiscences.

Ford, H. J., *Rise and Growth of American Politics*. A brilliant study of causes and effects.

Johnston, in Lalor, under Names of Parties.

Periodical literature indexes under Political Party, Caucus, Primary, Convention, Machine Rule, Nominations, etc. There is an immense amount of material referred to under title United States History.

532. **The Place of the Political Party in our Political System.** — It is scarcely too much to say that if government is

the political organization that carries out the wishes of the State, parties are almost as much the organizations that control the government. There is scarcely a law made, an official chosen, or a policy discussed concerning which the political party does not exercise the predominating influence. This country does not have party government in the sense that the conduct of all affairs, national, state, and local, are intrusted to a single party organization, which carries out its plan for the whole system of governments; but it does have party government in the sense that the political party stands between the people and the government, and that the representatives of the party which has the majority in any government, or has been indorsed by the majority of the voters, control affairs until they are turned out and the representatives of a second party installed.

The party an essential part of the machinery of government.

It is the intention in this chapter to summarize very briefly the history of parties, give some idea of the partisan methods in use, to show the legal status and responsibility of the party, and means suggested to gain better results from party government.

533. **The Federalists.** — The history of our political parties is, to a considerable extent, identical with the political history of the United States; but a clearer conception of the work done or policies advocated by the different ones may be given by considering a few points purely from the standpoint of party.

Party history and political history interwoven.

There was no attempt to organize the adherents of different theories or opinions during the early years of Washington's administration, and the first parties grew out of the personal differences of Hamilton and Jefferson (§ 151). The Federalist party, which remained in power till 1801, was distinctly English in views and policies. It stood for three things: a strong central government, rule by the aristocracy, and alliance with the commercial classes. The last two placed it out of touch with a people devoted to agriculture and favoring democracy; and the Federalist power, once broken, was never regained.

Policies of Federalists.

Johnston, in Lalor, II, 165–172.

Federalist strength.

The Federalist strength was derived from the New England and the smaller Middle states, upon some of which the party retained its hold for two decades after the presidency passed out of its hands. In the Senate it was never able to make a showing after 1801, but in the House a fair-sized and active minority continued to oppose the government until Monroe's second term.

Democratic-Republican principles.

Johnston, in Lalor, I, 769–774.

534. **The Democratic-Republican Party.** — While the party of the opposition, the Democratic-Republicans favored the restriction of national power, rule by the people, the predominance of agricultural interests, and, in foreign affairs, the French. With the election of Jefferson, in 1801, they abandoned in part their adherence to a strict construction of the Constitution, but they never ceased to prefer the agricultural sections to those devoted to commerce. Once in power, they were able to keep the Federalists out by reason of a broader national policy, and because both the admission of new states and the more liberal suffrage in the others increased their strength continuously. In the end they carried every state, as is shown by the result in the presidential election of 1820.

Changes in the Democracy.

Johnston, in Lalor, I, 774–779.

535. **The Democratic Party (1824–1852).** — In the very nature of things, when there is no pressure upon an organization from without, disruption is sure to follow, and this was what happened in the Democratic-Republican party in the years following 1824. The election of that year, and the subsequent contest in the House of Representatives over the choice of a President (§ 171), produced an alliance of the loose construction elements that followed Clay and Adams, giving them control of the government for a time. But when Crawford withdrew from politics, and his adherents went over to Jackson, the personal popularity and magnetism of "Old Hickory" produced a new Democratic party, like the old one, in being truly democratic and anti-commercial, but broader and more national. In a country still largely devoted to agriculture, it was not difficult for the Democrats to keep the government in their hands most of the time from 1826 to 1852.

The parties of this period were not so sectional as those that preceded and followed them, but in the main the Democratic party held most of the South, the extreme West (of that day), and part of the Middle states. The Supreme Court never contained a large number of anti-Democratic judges, and only for four years did the Democrats lose either Senate or presidency.

Successes of the Democrats.

536. **The Whigs.** — The Whig party grew out of the National Republicans or loose construction element of the Democratic-Republicans. This reorganization took place between the years 1824 and 1832, and was largely due to the influence of Henry Clay. The chief principles emphasized by the Whigs were protection to home industries and internal improvements. They generally controlled the New England and small Middle states, besides Kentucky and Tennessee; but the policy which might have given them the West, *i.e.* internal improvements, was less necessary after the advent of the railroad, so that the Northwest usually went to their opponents. Once, and only once, they had the presidency, the Senate, and the House within their grasp; but the death of President Harrison and the inauguration of the radical Democrat Tyler blasted all their hopes.

Political doctrines of the Whigs.

Johnston, in Lalor, III, 1001–1008.

537. **The Second Reorganization** (1852–1860). — After 1850 there was only one really live political issue — that of slavery — and, in spite of themselves, the parties were obliged to adapt their platforms and policies to it, after in vain trying to keep it out of politics. The Whigs held antislavery views, on the whole; but, especially after the crushing defeat of 1852, could not rally enough Northern members to form an antislavery party. They therefore disappeared and, after 1854, the anti-Nebraska, or, as it was a little later called, the Republican party, united the antislavery forces. The Democrats managed for a time to keep all the pro-slavery elements and, in addition, maintained their organization in the North by favoring popular sovereignty; but in 1860 the clash between North and South broke even that party into two wings.

The slavery question in politics.

Johnston, in Lalor, I, 779–782; III, 597–599.

Stanwood, *Hist. of the Presidency*, 244–297.

American party.

Johnston, in Lalor, I, 85–87.

Meanwhile, those who were unwilling to take sides on the slavery question organized a widespread secret society, popularly known as the "Know-nothings," from their unwillingness to betray their secrets. Its principal object was to keep foreigners from obtaining citizenship or holding office until after a residence of twenty-one years. Before the slavery question became very acute, this party was able to carry several states, and in 1856 and in 1860 it polled a large vote.

Policies and victories.

Johnston, in, Lalor, I, 782–788; III, 599–603.

538. **The Parties since 1860.** — Brought into power, in 1860, by the dissensions in the Democratic ranks, the Republicans remained in possession of Congress till 1875, and of the presidency till 1885. Since those dates it has shared both legislative and executive departments with the Democratic party, each having the presidency eight years and control of the House for nearly equal periods, though the Senate has been Republican most of the time. Before 1880 the parties were divided principally over issues arising from the War of Secession; from 1880 to 1892 the question of the tariff was most prominent; from 1892 to 1898 the silver difficulty absorbed popular attention; and since 1898 the problems growing out of the Spanish-American War have been given first place.

Policies before 1876.

Stanwood, *Presidency*, 298–356.

In the elections from 1866 to 1876 the important topics dealt with home manufactures and paying the debt in coin, these being proclaimed by the Republicans, and incorporated into the laws. The opposition was not well organized nor united except in opposing the Republican administrations. While the carpet-bag governments controlled most of the Southern states, even flagrant abuses of power by the Republicans did not lead to national Democratic majorities; but as the whites gradually regained the ascendency in the reconstructed states, and federal forces which had controlled elections were withdrawn under Hayes, there was welded together a "solid South" that has never yet been broken except on the northern border.

Presidential election of 1880.

Stanwood, 394–418.

539. **The Tariff Campaigns.** — The interest in the campaign of 1880 centres not so much in the struggle between the parties, close as that was, as in the factional contest in the Republican convention between the followers of James G. Blaine and the adherents of Grant, who sought to nominate him for a third term. After many futile ballots, the Blaine men rallied to the support of James A. Garfield, a "dark horse," but during the campaign he received only half-hearted

support from the Grant, or better, the Conkling wing, and after the inauguration there was an open rupture between the two that had a considerable influence for several years. The question of the tariff was not raised at first, but just before the election the Republicans denounced the "free trade" propositions of the Democrats with telling effect. The result was the election of Garfield and Arthur.

Four years later, the Republicans came out more pronouncedly for "protection," while the Democrats favored "tariff reform." For the first time in twenty-five years the Republicans were defeated, the election of Cleveland over Blaine being due principally to the support which the former derived from the independent Republicans and the failure of Conkling to come out for Blaine.

Election of 1884.

Stanwood, 419–449.

In 1888, and again in 1892, the election turned more than in any previous years upon the question of "protection" or "tariff for revenue only." The platforms were more explicit than in former campaigns, and the candidates were the same in both years, Cleveland being nominated by the Democrats and Benjamin Harrison by the Republicans. In 1888 the Republicans secured not only the presidency, but small majorities in both houses. This enabled them to carry through several party measures which were not approved by the voters in either 1890 or 1892, Cleveland being elected in the latter year by fairly large pluralities in the states, but a very large majority in the electoral college.

Elections of 1888 and 1892.

Stanwood, 450–518.

540. The Campaigns of 1896 and 1900.—Beginning in 1890, there had arisen in the West a new party, whose avowed object was to secure from the national government legislation that would directly benefit the agricultural classes. A large vote was polled in 1890, and in 1892 twenty-two electoral votes were secured in the electoral college. The hard times after 1893 and the anti-silver actions of the government at Washington united the West in favor of the free coinage of silver as the best means of securing the desired legislative relief. So strong was this movement that in 1896 it controlled the convention not only of the People's party, but of the Democratic party as well, both of which nominated William J. Bryan for President, and demanded the free coinage of silver at the former legal ratio of sixteen to one. The Republican convention, held before either of the others, nominated William McKinley, and favored international bimetallism, but sought to subordinate the silver issue to that of protection. In the November election the East supported the Republican ticket and the West the Democratic candidate, without much regard to party. The majorities in the manufacturing states for the one, and the mining states for the other, were unprecedented, but the electoral majority for the Republicans was nearly one hundred.

People's party and election of 1896.

Stanwood, 519–569.

The campaign of 1900.

The same nominees ran in 1900 as in 1896, but the silver issue was subordinated to that of "imperialism." The Republicans indorsed their acts legally establishing the gold standard, and declared themselves in favor of holding and governing the possessions acquired in the treaty of Paris (1898). The Democrats again indorsed free silver coinage at the ratio of sixteen to one, but asserted that "imperialism is the paramount issue," and that the United States should merely assure to the inhabitants of the colonies the right of self-government. Bryan was also nominated by the Silver Republican convention and one of those held by the People's party; but, although the state pluralities were almost everywhere more uniform, the Republican majorities were greater than in 1896.

Minor parties since 1870.

Since 1870 the Prohibition party has always had nominees, while the Labor party dates from about the same time. The Socialist Labor party and the Social Democrats usually have tickets in the field, and the non-fusion Populists nominate separate candidates. The only minor parties which have polled large votes were the Greenback party in 1878 and the People's party from 1890 to 1894.

A gloomy view.

541. The Work of a Party. — A great many pessimists would undoubtedly say that the work of the political parties consists in controlling the governments for the sake of the patronage or "spoils of office." Unfortunately, there is considerable truth in the statement; but it is true because of abuses which have been, and can be, remedied.

Three tasks performed for the members of a party.

Whatever the motives of the parties may be, the people desire to express their wishes through them; and in order that this may be possible each party must do three things: (1) It expresses the views and formulates the principles of the groups of persons who, because they think alike, form a certain party. This is done presumably in the platform, which is elaborated and explained during the campaign. It is expressed more honestly and exactly by the laws made after the election, if the party has a majority sufficient to permit unaltered partisan measures to be passed. (2) The party furnishes the machinery by which its members may nominate candidates for elective offices, thus insuring to the party voter a set of persons, of his own political views, for whom he may cast his ballot. But as these two preliminaries are of no practical value, if the other side wins

at the polls, the party (3) maintains an organization which includes every hamlet, but concentrates power so as to avoid all possible friction. The true work of this huge machine, for such it must be, is to secure the election of its candidates by every method it can devise.

Party organization: committees and conventions.

542. **The Permanent Party Committees.** — At the present time the formulation of platforms and the nomination of candidates is everywhere performed by conventions, which meet some time before the elections; while the conduct of the campaign belongs to permanent committees, which affect so vitally the work of the party that they deserve to be considered first.

Remsen, *Primary Elections*, 32–36.

Completeness of the committee system.

Each party has as many sets of these committees as there are kinds of political divisions in the United States, *i.e.* there is a national committee for the country at large, a committee for each state, one for each county, city, town, ward, and, perhaps, assembly district. All of these have a great deal of power, but the ones for the smaller territorial districts have the most.

Composition and sessions.

543. **The National Committee** is composed of one member from each state chosen for a period of four years. The committeemen may be elected by the state conventions which invariably meet just before each national convention, or by the delegates from the state to the same national convention. Their important duties relate to the presidential campaign. Toward the close of the year preceding a presidential election, they hold sessions for the purpose of deciding where the convention shall be held. At this meeting the claims and attractions of the cities desiring the convention are set forth by some popular resident, after which the committee announce their decision as to when and where the next national convention shall meet.

National executive committee.

For the prosecution of the campaign the committee chooses certain of its members as an executive committee, the chairman of the latter having the real charge of the campaign, though often not a member of the national committee at all.

Funds for speakers and literature.

Two parts of the work stand out in especial prominence: one connected with raising funds, the other with gaining votes. Contributions are ordinarily made by interested members of the party, some of this going to the local committees and some to the national committee. That in the hands of the latter is used to pay the speakers selected to make tours in doubtful states and to pay for the enormous amount of campaign literature and other matter, printed under the direction of the executive committee, that is scattered broadcast over every state in the Union.

Composition and tenure.

544. **State and Local Committees.** — These committees are more likely to be on duty constantly than the national committee, for local and state elections occur frequently. They are made up of representatives from each of the next smaller political division; *e.g.* the state committee is composed of partisans from the counties, and the city committee of those from the wards. The tenure is apt to be shorter than four years, but reëlection is the rule, except when a revolt takes place within the ranks.

Remsen, *Primary Elections*, 37–47.

Work of the state committees.

The state committee designates the time and place for the state convention, and always seeks to control its organization as well as the nominations it makes. The committee also oversees the local committees and takes charge of state and congressional elections.

Influence of the local committees.

The importance of the "lowest" committees grows out of the personal influence which they exert directly upon the voters. They make this felt either at the time the primaries are held, in order to have each primary choose the delegates which the committees desire during the campaign, by personal work among the electors; or at the polls, by bringing the indifferent ones to vote.

The machine and how it maintains its power.

545. **The Boss and the Machine.** — The hierarchy of permanent committees is usually spoken of as the "machine." The term is ordinarily one of disapproval, because most machines have the interests of the party less at heart than their own advancement. More often than not they have become those most undemocratic institutions, "close cor-

porations," whose real aim is to perpetuate their own power. This they do by controlling all of the elective offices and, through them, the appointive ones; but this, in turn, necessitates the control of the nominations. Yet, in order to get their men nominated, they must have the right delegates, and to obtain these the primaries must be favorable to the machine. Accordingly, their chief aim is to control the primaries, for if they fail completely to gain these, their power is gone. As they alone call the primaries and decide who may go, the primary usually elects whom they desire. But when it hesitates, the machine has often resorted to force or fraud to carry out its programme. So absolute has the power of the machine over the primaries become in many large cities that the citizens are unwilling to attend, and the politicians have everything their own way.

Bryce, *Amer. Commonwealth* (3d reg. ed.), II, 82–106.

The "boss" is the person who dominates the machine, or the part of it in his district. He is ordinarily a keen student of nature and a shrewd, energetic man of affairs. Boss rule is objectionable principally because it represents an extreme form of dictatorial power with very little chance of enforcing responsibility.

The boss.

Bryce, *Amer. Commonwealth*, II, 107–119.

546. **The National Convention: Composition and Organization.** — The temporary, as distinguished from the permanent, organization of the party is represented by the nominating convention. For the national convention the call, as stated above, is given about six months before the convention meets in the early summer of the presidential year. The number of delegates is twice that of the senators and representatives from each state; and although the whole of a state's delegation may occasionally be chosen by a state convention, summoned for that purpose, the custom is to have the state convention choose four delegates at large (corresponding to the two senators), and have conventions in each congressional district appoint two delegates, besides the alternates who are to serve in case of need.

Election of delegates.

Dallinger, *Nomination for Elective Office*, 74–78

Before the convention is called to order by the chairman of the national committee, each state delegation holds a

Preliminary duties.

Dallinger, 78–84.

meeting and selects a national committeeman to serve for the next four years, and a member for each of the four convention committees on organization, credentials, rules, and resolutions. On the first day the vote upon temporary chairman may constitute a test of the strength of the different candidates or policies, but that cannot be definitely determined till later, after the report of the committee on the credentials of contesting delegations.

Report of committee on resolutions.

547. **The Platform and the Nominees.** — About the third day the committee on resolutions reports the platform. There may be little or no opposition to any of the planks, and the motion to adopt be purely perfunctory; or a plank may be changed or modified, if it relates to something important, or accepted only after heated debate and a fairly close vote, as in Chicago in 1896.

Nominations.

Dallinger, 84–87.

Nominations are then in order and the roll of the states is called. Presentation of names is always accompanied by complimentary speeches, followed by a second or even third laudatory effort. The number of candidates averages from eight to ten, most of them favorite sons, to whom a small vote is given on the first ballot as a token of appreciation.

Different methods.

In the conventions of the two great parties methods differ little except in two respects: the Republicans permit each delegate to vote as he pleases, and require only a majority to nominate; the Democrats have each state delegation cast its vote as a unit, *i.e.* all for the same person, and demand two-thirds of the votes before any one is chosen.

Observations on historical nominations.

Presidential candidates are occasionally nominated by acclamation, as Grant was in 1872 and Cleveland in 1892, or as many as fifty-three ballots may be taken, as in the Whig convention of 1852. Where several ballots have been cast without result, the nomination has gone eventually to some comparatively unknown person who at first received but a small vote or none at all; but invariably when one candidate receives a sufficient number, one of his less fortunate opponents moves that the nomination be made unanimous. The work of the convention closes with the selection of a nominee for Vice-president,

the position usually going to the leader of some faction or to a partisan from a different section from that of the President.

The later work of the party in connection with the campaign and the electoral college has already been considered (§§ 331, 332).

548. State and Local Conventions. — At the present time practically all the important nominations for elective office, except those of President and Vice-president, are made by state and local conventions. These are usually large bodies composed of several hundred delegates, who are chosen in the primaries for city, county, or even congressional district conventions, but for state conventions are selected by those of the localities. All of these conventions are called by the appropriate permanent committee, the chairman of which presides over the deliberations of the conventions until their officers are chosen.

Composition.

Dallinger, 63–65.

The first duty is ordinarily to appoint convention committees upon credentials, organization, and resolutions, all of whom have been selected beforehand by the permanent committee so as to facilitate the conduct of business. The committee on credentials decides which of two contesting delegations shall be seated, its task being similar to that of the committee on elections in the House of Representatives (§ 282). That on organization reports a list of officers, including chairman, secretary, and many honorary vice-presidents, while the one on resolutions reads a platform agreed upon before the convention met. If there is no opposition, all of these things occupy little time, and the convention then devotes itself to the nomination of candidates. The machine has always agreed upon a "slate," or list of candidates, but there is no outward evidence of such preconcerted action except the smoothness with which everything is done. Nominations are made for each office separately, the merits of the respective candidates being extolled. If but one person is suggested for the position, no formal ballot is taken, otherwise balloting continues until some one has a majority of all the votes cast. When all the nominations have been made, the convention ad-

State and local conventions at work.

Dallinger, 59–62, 65–72.

Remsen, *Primary Elections*, 64–74.

journs, the length of its session having depended, to a large extent, upon how well the machine has it in hand.

The citizen and the primary.

Remsen, 48–58.

Dallinger, 95–126.

549. **The Primary.** — A primary is a mass meeting of the party voters, in a definite locality, called by the local committee for the purpose of selecting nominees for office and delegates to party conventions. When once the electors have started, in the primaries, the machinery by which platforms are constructed and nominations for all offices are made, they stand aside until, on election day, they may choose between the candidates of their own party or those of another. As the election may offer but a choice between two unsatisfactory men, the voter may be compelled to exert an influence in the primary or not at all. But, as we have already seen, in the primary he must fight the machine; and to the machine the control of the primary is a matter of life or death, unless it is working for the public good and not for private gain. Yet the strangest thing of all is, that the citizen ordinarily makes no effort to assert his rights at this point, where it might have some effect. Usually he stays away; but when he goes, more often than not he offers no opposition to machine dictation. Perhaps this is due to his belief that protest is futile, possibly to lack of organization in the anti-machine element, but probably to indifference. He may even support the "slate" proposed because it contains two or three good names placed upon it to tempt the waverers, while the others he does not know. Whatever the reasons may be, it is a fact that never, for any length of time, in any of our large cities, has the machine loosened its hold upon the primary, while even in rural districts the organization is complete and the primaries more or less under machine rule.

Need of reformed primaries.

Remsen, 91–98.

550. **Reform of the Primary.** — The importance of the primary to pure politics is so generally recognized that numberless suggestions have been offered of means for making it serve the purpose it was intended. It must be apparent that improvements in the suffrage, in the ballot, and in the elections themselves must be more or less worth-

less if the primaries remain unreformed. These other things touch the surface and perhaps deceive us by the good appearance they make; but the primaries are the heart of the body politic, and, if they are corrupt, it cannot be different. Reform so far has made little progress, as the machine primary, like old Proteus, has a wonderful capacity for changing its form and eluding our grasp.

The problem of public control.

Dallinger, *Nominations*, 183–189.

551. **Public Control of the Primaries.** — Effort has been principally directed toward bringing the whole system of nominations under the control of the state. Laws have been passed relative to the times primaries shall be held, those who shall take part in them, the polling and counting of the votes, and the holding of subsequent conventions. The subject is of such vital interest to the welfare of the community and the preservation of its popular government that state control is theoretically indispensable if abuses exist, which we are not blind enough to doubt. But the problem is just as complex after the state endeavors to solve it as before. For example, shall the state lay down a rule to determine who shall vote at the Republican and Democratic primaries, or shall it leave that difficult question to the party? If to the latter, what is to prevent a committee from restricting the right to vote in its own interest? If by the state, what shall the rule be? Several have been tried. One makes it necessary for the voters to register with some party at the previous election, but such public allegiance has more than once endangered business positions. Another gives each voter at a public primary election ballots for all the parties and allows him to cast whichever one he wishes, but it permits followers of one party to vote the other ticket for the express purpose of selecting unfit men as delegates and candidates. A third makes it depend upon whether the elector supported the candidates of the party at the last election or will at the next one, but with a secret ballot the test must be imperfect. All this, however, is by way merely of illustration, giving some sidelights on just one side of one problem. As a matter of fact, few

states have done much in regulating primaries or other party meetings, and most of those leave this particular question of who may vote in the primaries to the parties themselves. None of the laws have done more than abolish "snap" primaries, *i.e.* those called on insufficient notice, and guarantee fair treatment to the rank and file. The primary is still Proteus.

Vast extent of public patronage

552. **Importance of Nominations.** — It is scarcely necessary to call attention to the close connection between satisfactory nominations and good government, but a brief summary of the number of elective offices, and the appointive ones that belong to them, may give us a clearer idea of the need of the best methods. There are less than 500 persons elected by the people who are connected with the national government, yet those 500 have at their disposal over 100,000 appointments, many of them to first-class positions. Less than 100,000 regular paid officials are elected by the voters in our states, counties, cities, towns, and other local districts, but probably between 200,000 and 250,000 persons besides those in the schools are appointed in these same governments, very few of whom are selected solely or chiefly because of ability. Thus, at present, patronage running up into hundreds of millions a year is the reward not so much of the persons elected as of the power behind the throne — the machine. The immense influence wielded because of the control over so many places, coupled with the advantages that may be derived from handling $1,000,000,000 a year for other purposes, has developed and maintained the machine organization. The temptation to turn these party organizations into close corporations has, consequently, been too strong to be resisted, except in the rural districts and a few urban ones, and the committees that were meant to serve their party have more often come to dominate it. Their control may be partially loosened by bringing state and local positions under civil service rules, but can be removed by leaving the committees only a just share in the privileges of nomination.

553. **Direct Nominations.** — Because of objections to nomination through conventions which might be controlled by politicians rather than the people, direct nominations have come into use for local offices in a majority of the states, and for state offices in most of the Southern commonwealths, in almost all of the Middle Western states, and in those of the extreme West. The names of all those who desire or will accept the nomination for any office are placed on file with the city or county clerk as soon as they have obtained the signatures of a certain number of voters. On a day set by law a primary election is held, similar in most respects to a regular election (§ 524), and the voters are allowed to select their candidates for each office to be filled at the coming election, provided that no one is permitted to vote for candidates of more than one party, in order that the members of one party shall not be allowed to influence the nominations of another.

Candidates selected by the voters directly.

Allen, P. L., in *Outlook*, 84 (1906), 120–125.

Shaw, W. B., in *Outlook*, 90 (1908), 383–389.

Merriam, *Primary Elections*, 68–89.

Many of the states make use of the direct primary to increase public control of the party organizations, forcing the parties to choose their committees at these primary elections. This should produce party organizations fairly representative of the members of the party. There is little doubt that many of the vexed problems of nominations for elective office may be solved by perfecting and reforming the party organization, and, except in city elections, by permitting the party leaders to suggest names for most of the candidates to be considered at the primaries. The direct primary can then be used as a check to secure the nomination of the best possible candidates, a work for which it should be particularly fitted.

Party control by, and party leadership in, direct primaries.

QUESTIONS AND REFERENCES

History of Parties (§§ 532–540)

1. To what extent were the parties before 1860 occupied with constitutional questions? Is it true that the one in power was always

loose constructionist in practice? Why are constitutional issues less prominent to-day?

2. Explain as fully as possible the failure of the Federalists to regain control of the government. Compare the Whig party in composition and principles with the Federalists. How do you account for the comparative equality of the two great parties since 1872?

3. Trace the history of the Liberty and Free Soil parties to 1856. Were they both in favor of abolition of slavery? To what degree did the Republican party represent their antislavery principles?

4. Make a study of the platforms of the Labor party for 1872 and of the People's party for 1892. What doctrines announced by the former are now accepted by our governments? What were the most striking propositions of the latter?

5. Take some interesting campaign, as 1844, 1860, 1876, 1884, or 1896, and examine the proceedings of the nominating conventions, the character of the platforms, the conduct of the campaign, the decisive influences in the result, and the states or sections carried by the respective candidates.

i. What is the greatest electoral majority obtained by any presidential candidate since 1828? the greatest popular plurality (in proportion to the size of the whole vote)? Give both electoral majorities and popular pluralities since 1888. (Johnston, *American Politics*, Appendix; and Political Almanacs.)

ii. What is the present composition of the United States Senate and House? Of your own state legislature? What Congresses since the Civil War have been overwhelmingly Republican or Democratic? How has your own state voted in recent elections? Why does the state favor the party that it does? Give the political faith of your representatives in all governments, from the highest to the lowest.

Organization and Work (§§ 541–549)

1. Should a party be chiefly concerned with serving public opinion or leading and educating it? Why is a complete and permanent organization so necessary to a party? Are independent movements failures because they may be temporary?

2. Can a party do its work without a class of professional politicians? Is there any good reason why the benefits of success should not go to the men who bear the brunt of the struggle? What is the best method of obtaining both a powerful organization and the best candidates for office, *i.e.* of protecting both the public and the party?

3. Would it not be better in the end for the people to have nominations made directly by the machine than in conventions controlled by the machine? Give your reasons in full.

i. Give the names and, when possible, some account of the following for Republican and Democratic parties: chairman of the national committee; of the national executive committee; member from your state on the national committee; member from your county on state committee; the chief party leaders, if any, in your county and city.

ii. What conventions were held in the state and localities last year? Ascertain the dates on which each was held and the approximate size of each.

iii. What rule for party allegiance prevails in your own precinct? Are the caucuses and primaries well attended?

Reform and Control (§§ 550–553)

a. On reform of the primary, consult Field, D. D., in *Forum*, XIV (1892), 189 *et seq.*; Pavey, F. D., in *Forum*, XXV (1898), 99–108; Easley, in *Review of Reviews*, XVI (1897), 322–324; and Hotchkiss, in *Review of Reviews*, XVII (1898), 583–589.

1. Would the primaries be so important if we did not have reformed methods of voting and counting the votes? Is there any possibility that a reform of the primary may necessitate a reform of what precedes the primary? Will a reformed primary make popular interest in party affairs more or less necessary if good results are to be obtained?

2. Why is it more difficult to prescribe rules for party members than to determine who are voters? Should a rule for membership in a party ever take into account a voter's position in local elections?

CHAPTER XXIV

LEGAL AND CONSTITUTIONAL RIGHTS

General References

Bryce, *American Commonwealth*, 306–311.

Burgess, *Political Science and Comparative Constitutional Law*, I, 184–252. Immunities against the central and state governments guaranteed by national Constitution.

Cooley, *Constitutional Limitations*, chaps. IX–XIII. Immunities of citizens of the states.

Cooley, *Principles of Constitutional Law*, 214–357. Rights enjoyed under the United States government especially.

Walker, *American Law*, Part VI.

Parsons, *Political, Personal, and Property Rights of Citizens of the United States.*

Dole, *Talks on Law.* A popular account, giving methods of protecting rights.

State constitutions, bills of rights.

Guarantees of liberty in the past and the present.

554. **The Bills of Rights in History and Law.** — If there is one thing more than any other in which English-speaking people have taken the greatest pride, it is the individual liberty which they have enjoyed under their various governments. There has always existed a hatred of arbitrary control more marked than among other races, although the development of real liberty did not reach a high plane till comparatively modern times. This dislike for undue government restraint has nowhere and at no time been given freer expression than during the early part of the great revolution in the American colonies (chapter IV). The change from imperial to American rule could not remove from the minds of the people a dread of interference by the government; and hence led the organizers of the new

state constitutions to insert in those documents bills of rights reiterating the favorite political principles of the day and repeating some of the time-honored provisions of the Petition of Rights (1628) and the Bill of Rights (1691, § 48). How greatly the people felt the need of constitutional restriction upon their representatives is seen in the pronounced opposition to the adoption of the present Constitution of the United States without a bill of rights (§ 120). These guarantees of liberty, instead of growing fewer, as we might imagine, have increased in number, in explicitness, and in value. Many of them are unnecessary now as then, because public sentiment is a unit upon them, and public sentiment is, in many ways, a better safeguard than a constitution; but it must be taken into consideration that when a court decides that a particular act violates an individual right, it can protect the right only because the act violates, at the same time, the law, statutory or constitutional, which guarantees that right. So public sentiment could not supplant the constitution as a protector of the individual; it can only supplement it.

Immunities against national and state governments.

555. **Classification of Civil Rights.** — We may roughly classify civil rights according to the source of possible restraint from which protection is afforded, as I, rights against the government or immunities from governmental action; and II, rights against individuals. Under the first head we have (1) immunities against the national government, all of which are contained in the United States Constitution or statutes; and (2) immunities against the state and local governments, which are guaranteed either by (*a*) the United States Constitution or (*b*) the constitutions of the states. Statutes may still further extend the field of this form of individual liberty; while the practical value of the constitutional provisions depend, to a large extent, upon the interpretation which the courts give them.

Rights against individuals.

The rights against individuals are, in fact, guarantees, made by the constitutions or the governments, that certain rights shall be respected by others. They are of two kinds:

(1) personal rights and (2) property rights; and the guarantees made in state statutes are usually in the form either of methods of procedure or of penalties for personal injury (not considered in the light of a crime), and of payments for damages done.

It will be impossible in a single chapter to treat more than the constitutional rights, with slight reference to those which are protected in criminal and in private law.

Apply almost exclusively to national government.

556. General Rights in the United States Constitution. — As indicated in the last section, the provisions of the United States Constitution which guard individual rights afford protection either from the United States government, the state government, or both; but it must never be forgotten that they apply exclusively to the government of the nation unless otherwise stated. In other words, practically the whole national "bill of rights" has nothing whatever to do with the state governments, which, so far as the United States Constitution is concerned, may abridge liberty of the press, freedom of speech, or religious freedom, and deny right of trial by jury. Since the national government is one of enumerated powers and, therefore, can do only that which has been granted to it; and since practically the whole domain of private and criminal law belongs to the states, there was, and now is, much less need of protecting the individual from the central government than from the state and local governments. But so far as the United States does deal with individuals, the need is far greater, because the national government is less easily subject to popular control.

Provisions applying to both central and state governments.

Cooley, *Const'l Law*, 294–301, last ed.

557. Immunities from all Government. — Certain personal rights are protected by the national Constitution from both national and state governments. Neither Congress nor the legislatures are allowed to pass any *ex post facto* law, *i.e.* to make an act criminal which was not a criminal act at the time it was performed, or to increase the penalty for a crime committed before the law which made the penalty

heavier had been passed. Neither government shall pass any bill of attainder, which deprives an individual of life and his relatives of property by act of a legislature. Neither has the right to establish slavery or any form of servitude "except as a punishment for crime whereof the party shall have been duly convicted." Nor can either government deny to any one the privilege of the writ of *habeas corpus*, unless the denial is justified by public danger. To us these statements are platitudes, but they are all, especially the last, aimed to prevent the recurrence of abuses that darken the pages of English and, to some extent, American history.

Regulations regarding religion.

558. **Freedom of Speech and Religion under United States Government.** — The first amendment to the Constitution denies to Congress the right of either establishing any religion or prohibiting the free exercise of a religion by any individual. This does not prevent Congress, however, from making illegal such practices as polygamy within the territories, even when that is one of the fundamental doctrines of a religious sect.

Speech, the press, petitions, and assembling.

Cooley, *ibid.*, 278–281, 283–293.

The same amendment prevents Congress from abridging freedom of speech and of the press, or denying the right to assemble and petition the government. All of these provisions are less important than they seem, because it is held that within the states Congress has no power whatever to deal with these subjects; and some go so far as to assert that when an official of the United States is defamed by a citizen of a state, he can have recourse only to the legal remedy of that state. For that reason the sedition law of 1798 (§ 153), which in substance created a national libel law, has been thought by many to be unconstitutional.

Protection from soldiers and arbitrary arrests.

Cooley, *ibid.*, 217–222.

559. **Personal Security under the United States Government.** — The abuse of the privilege claimed by the British government in colonial times to quarter its soldiers in private homes without pay, and to issue general warrants for search of houses and arrest of persons, led to the adoption of the third and fourth amendments. In time of peace no soldier of the United States shall be permitted to occupy a

house if the owner is unwilling; and, during wars, he can do it only in accordance with regulations laid down by Congress for the whole country, though it must be admitted that an aggrieved person finds it difficult to obtain any redress under the latter conditions. Neither can a United States officer, by means of a general warrant, *i.e.* one which does not name the person accused or the goods to be seized, ransack the house of suspected persons till incriminating evidence is found, and, upon that evidence, arrest the person.

Jury trials.

Cooley, *ibid.*, 246–250, 301–310.

560. Immunities against United States Government in Other Respects. — Although so few crimes come under the jurisdiction of United States courts, there are elaborate provisions in the fifth, sixth, and eighth amendments which guarantee right of trial by jury and other rights, which give the accused every possible advantage. As the state bills of rights are quite similar, and vastly more important because used so much more, these rights will be enumerated later. Right of trial by jury in suits at common law involving at least $20 is assured by the national Constitution, while the people are permitted to keep and bear arms at all times in order that a military despotism may not be possible. In the punishment of treason the government is restricted to the definition of that crime given in the Constitution; guilt must be proved by testimony of at least two witnesses to the same act or confession in open court, and no conviction shall affect any one but the guilty party.

Amendment V.

In the fifth amendment, security for persons and property is assured in the words, "Nor shall any person . . . be deprived of life, liberty, and property without due process of law, nor shall private property be taken for public use without just compensation."

Regarding contract laws.

Cooley, *Const'l Law*, 311–327

561. Protection by the United States Constitution against the State Governments. — The rights of individuals against the state governments are protected by two very useful provisions of the United States Constitution. One of these is in the Constitution itself, the other in the fourteenth amend-

ment. The first says that no state shall pass any law impairing the obligation of contracts, and has been the source of almost unlimited dispute, due especially to the meaning of the word *contract*. It is now understood that any law which alters in any way a contract between private parties, or changes in an unreasonable way the means of enforcing it, comes under this prohibition upon the states. Likewise a contract, as *e.g.* a charter, made between the state and individuals or corporations, cannot be altered by the state government unless the state constitution expressly reserves to the legislature the privilege of changing it, or the contract itself provides for amendment or cancellation by the state.

Payment of debts in gold or silver.

In the same section of the Constitution that contains the clause considered above, the states are denied the right to "make anything but gold and silver coin a tender in payment of debt," thus protecting creditors on long time payments and all citizens in regular business.

What it includes.

Cooley, *ibid.*, 230–235.

562. **Protection by "Due Process of Law."** — The first section of the fourteenth amendment asserts that no state shall "deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law." If a state shall attempt to do any of these things, the party aggrieved may obtain justice by taking his case before the United States courts. But, of course, no person is guaranteed that his state government will adopt those laws and that method of procedure that will give him the best opportunity to preserve his life and liberty and retain his property. In reality this is intended to serve only as a check upon arbitrary action by state governments. If the technical forms of law are observed, no person has any legal redress.

The older and the newer bills of rights.

563. **The State Bills of Rights.** — From a practical standpoint, the bills or declarations of rights in the state constitutions are much more valuable in maintaining individual liberty than similar articles in the Constitution of the nation. There is quite a difference between the older and

the newer bills, the latter being far more definite; but, nevertheless, a general similarity prevails. With scarcely an exception, they open with a repetition of certain statements from the second paragraph of the Declaration of Independence, and many of them close with such a generality as "a frequent recurrence to the fundamental principles of civil government is absolutely necessary to preserve the blessings of liberty." Many include a few maxims or principles of government, but, on the whole, they are devoted to an enumeration of specific rights which the older ones say *ought* to be preserved and the newer ones declare *shall be* inviolate. Most of them repeat the provisions of the national Constitution which restrict the powers of the state, and some of them are little more than a copy of the national bill of rights.

Michigan is the only one of the states that has no separate bill of rights. A good idea of the difference between the older and newer ones can be obtained by comparing that of New Hampshire or Vermont, or even of Massachusetts, with that of any state west of the Mississippi. The new constitution of New York gives an interesting summary of "rights."

Full religious rights.

Cooley, *Const'l Law*, 214–216.

564. **Religious Liberty.** — Nothing is given greater prominence in the state bills of rights than the statements referring to religious liberty. No state religion is to be established anywhere, nor is any person to be compelled to pay for the support of a particular church, to be denied free expression of religious views, to be disqualified from holding office or exercising legal rights because of his opinions. But some add that practices under the cloak of religion that are detrimental to public morals shall be punished as crimes.

The law of libel.

565. **Freedom of Speech and of the Press.** — The states have adopted many of the rules and practices of the common law — the original law of England — this having been the chief source of our rights and remedies; but some parts of this law have been modified in order to increase indi-

vidual liberty and gain the best results from government by the people. The common law did not give an individual the right to criticise candidates and officials as we do now, neither did it permit one person to say of another what we may legally do to-day. One of the maxims relating to the freedom of speech and of the press shows this; for as an eminent English chief justice, Mansfield, said, "The greater the truth, the greater the libel." Our own custom is exactly the reverse, for over half of our constitutions expressly state that in a suit for libel the truth may be given as evidence, and all provide for freedom of speech and the press, asserting, however, that all persons shall be liable for abuse of the liberty.

566. **Protection of Property from the Government.** — There are two ways besides robbery in which government may take the property of its citizens and subjects without their consent. One through taxation, the other by exercising the right of eminent domain. The state constitutions almost invariably go farther than that of the United States in protecting individuals from arbitrary action; *e.g.* when a constitution says that all taxation shall be just and uniform, and that the general property tax shall be levied in proportion to value, while double taxation is forbidden, property owners who believe themselves unfairly treated can have recourse to the courts with every probability of receiving justice.

Through just taxation.

The right of eminent domain may be exercised by the state either for itself, for one of its public corporations, or for private corporations, or private parties. The constitutions usually provide that the property shall be taken only for a public use, and arrange that in case of disagreement between the property owner and those needing the property the courts shall leave the amount of compensation to a jury or other tribunal, whose decision is final. Individuals are therefore fully protected, though their claim to a particular piece of property is subordinate to that of the public.

Eminent domain.

Cooley, *ibid.*, 344–357.

Holding persons for trial.

567. Rights of a Person accused of Crime. — Both the United States and the state constitutions are very careful in guarding the rights of any one held for trial. Persons suspected of murder can be tried only upon a presentment or indictment of a grand jury, *i.e.* only after an examination before impartial fellow-citizens followed by a written statement that the evidence justifies their being held. In most of the states, persons may be tried for lesser crimes upon a charge called information, made by the public prosecutor; but even then they may have the benefit of a preliminary examination before a grand jury or a justice of a minor court.

Trial of accused.

Cf. Cooley, *ibid.*, 301–310.

The accused is everywhere guaranteed a speedy trial, and, except for crimes punishable by death, has the opportunity of offering bail, which is forfeited if he fails to appear on the day appointed. When the trial begins, he has counsel furnished by the court if unable to pay for an attorney himself. Whatever witnesses he or his lawyer desire shall be called, and no witness can testify against him except in open court in his presence, an exception being made when death-bed testimony is introduced. A jury is always used to decide whether the facts show that the person is guilty, a unanimous verdict being necessary to convict. The defendant cannot be compelled to testify against himself, and if acquitted cannot be retried under ordinary circumstances. If the jury is divided in its opinion, however, there has legally been no trial whatever. The whole system presupposes a person innocent till proved otherwise, while everything about it favors the accused.

Two forms of codes.

568. Protection of Rights under Penal Codes. — The criminal laws made by the state legislatures serve at the same time to protect the general public and any individual who is injured, and yet render justice to those tried for crime. We may separate the laws into two parts,— the penal code proper and the code of criminal procedure. The former deals with the definition of crimes, the latter with the methods used by the criminal courts.

Most of the crimes are either against property or against the person, but the interest of the community at large to prevent the spread of crime is treated as more important than that of the injured party. As no one can be punished for crimes not on the statute books, every effort is made to fully cover the multitude of offences which may be committed, and provide suitable penalties for each.

Definition and nature of crime.

569. **Protection of Rights by Suits at Law and in Equity.** — Individual rights are, however, protected more by the "civil" than by the criminal laws. When a personal grievance against some one else amounts to a crime, the state takes charge of the prosecution, the complaining party being merely a witness, who obtains no pecuniary satisfaction if the defendant is found guilty; but in civil suits, the person aggrieved brings suit directly against the one who has injured his person or his property, and, in case his contention is sustained by the court, he obtains judgment for such an amount as the court deems reasonable.

Distinction between civil suit and criminal case.

Of "civil" suits there are two distinct kinds, commonly known as suits at law and suits in equity. They not only relate to different subjects, but employ entirely different methods. In general, the lawsuits deal with the ordinary affairs of life, including land titles, contract rights, debt obligations, and many others. The methods of procedure are rather complicated, and, while the number of rights recognized and guaranteed by this branch of the law are numerous, it would often be impossible to obtain justice through it alone, because it is too rigid and technical. These defects "equity" is intended to remedy. The procedure in equity cases is comparatively simple, and the methods of equity courts enable them to afford deeper, quicker, and more substantial relief than would be possible under the processes of the "law" courts. Equity, however, covers relatively few cases, and those are generally of a complex nature, such as questions of trust, liens, frauds, etc. The chief advantage of equity from the standpoint of rights is that, as Dole says, "equity administers the ounce of prevention; law, the pound of cure," *e.g.* by means of injunction an equity court will prevent your neighbor from erecting a nuisance at your dooryard or building a railroad across your lot, whereas a court of law can only give you satisfaction afterward for injury done.

Distinction between suits at law and suits in equity.

Protection of weaker classes by law.

570. **Homestead Exemption Laws.** — Many rights are now recognized by the constitutions and the statutes which formerly had no existence. For example, married women, who in times past had no separate property rights, are now almost everywhere permitted to own and manage separate property, and have claims upon that of their husbands; laborers are given preference over other creditors of their employers; and debtors are permitted to retain their homesteads in case of insolvency.

Homestead exemption laws.

Spofford, in Lalor, II, 462–465.

Cleveland, *Democracy*, 380–385.

At the present writing, homestead exemption laws are to be found in all but four states, all of which belong to the original thirteen. Of the others, the majority place the maximum value of property exempted at $1000 or $2000, though several go as high as $5000. Many of these also allow debtors to keep personal property, either in addition to the homestead or without the latter. Both the letter and the spirit of the law of to-day favor the rights of those who would naturally be least able to protect themselves.

Historical importance of jury system.

571. **Extent to which the Jury System is used.** — The credit for maintaining so satisfactorily the rights of individuals before the law in England and America belongs, to a very great extent, to the jury system. When popular participation in the work of government was much less common than at present, when judges could not possibly be influenced directly by the wishes of the people, and when the principal characteristic of the criminal laws was their harshness, the right of trial by jury was almost the sole source of justice for the common people. With the changed conditions of the present, it is no longer the one thing indispensable to the oppressed, but its extensive use bears witness that its value is not purely historic.

Right of trial to-day in criminal cases;

in lawsuits.

In criminal cases where the crime amounts to a felony, the guilt of the accused is always determined by jury; but for many kinds of misdemeanors the police justice renders the decision, unless the defendant demands a jury trial.

In lawsuits there is scarcely a state that does not permit the jury trial to be waived with the consent of both parties;

but some of the newer ones have gone farther and do not require a unanimous decision.

States that have abolished unanimous verdicts.

Nevada provided in her constitution (1864) that in civil suits three-fourths of the jury should be sufficient to decide. California, Washington, Idaho, and Utah have followed her example; Minnesota has given her legislature the right to pass a law that six of the jury are enough; while Montana is the most lenient of all, and allows two-thirds of the jury to decide civil suits. So far Idaho is the only state that has broken away from the unanimous vote in criminal cases by giving five-sixths of the jury the right to render a decision in misdemeanors.

To the jurymen and the accused.

Dole, *Talks on Law*, 78-83.

572. **Advantages of Jury Trial.** — Juries are an advantage both to the accused and the jurymen. To the former, because the facts connected with his guilt or innocence are viewed from the standpoint of common sense rather than of law. The jury disregards technicalities, but places the emphasis upon the right or wrong involved. It takes into account the circumstances, the motive, and the consequences, so that if it errs at all, it errs on the side of leniency. If the bench, and not the jury, were to decide the facts as well as the law, the letter of the law would be less violated with impunity; but its spirit would grow frail through disuse: the law would lose in force what it gained in definiteness. As a legal system it would be more perfect, but as a medium of justice it would be a failure, becoming more and more undemocratic.

To the citizen the jury gives opportunity for civic education. It brings him into touch with the work of administering the law and makes him part of it, and in so doing gives him clearer conceptions of legal rights and methods, and fits him to exercise his duties as a citizen with greater knowledge and to better purpose.

Abuses and defects.

Dole, 73-77.

573. **Disadvantages of Jury Trial.** — The main question is whether these advantages are worth what they cost, whether they apply to all forms of jury trial, and whether they are not, after all, but partially secured on account of the numerous exemptions from jury duty. Civilization to-day

is complex, and on every hand demands division of labor and concentration of effort. Formerly men had many lines of work, and one additional did not matter; but now to break in upon a prescribed routine entails serious loss not only at the time, but in all subsequent efforts. It has therefore been considered necessary to exempt from jury service all who are in the professions or upon whom responsibility is centred. This removes at once the ablest classes from the jury lists, and has given some ground for the charge that only the ignorant and thoughtfree are wanted. The jury, consequently, does not represent the community, and the civic education is as often as not wasted. Moreover, the juries are less fitted to understand and judge questions involving knotty problems of law, and, on the whole, do not give satisfaction in civil suits. They are especially desired by the lawyer who has a weak case, for he can easily deceive them; and, as they cannot take notes, an eloquent appeal at the last blinds them to all previous evidence. In criminal cases a jury drawn from the lower half of society often fails to protect that society out of sympathy for the accused. Summing up we may say: the jury is expensive, under present conditions it is necessarily unrepresentative; in civil suits, through its ignorance, and in criminal cases, through its prejudice, it often defeats the ends of justice.

QUESTIONS AND REFERENCES

Rights guaranteed by the United States Constitution (§§ 554–562)

1. Trace the history of the writ of *habeas corpus* (cf. Medley, *English Constitutional History*). Has the denial of the privileges of the writ in this country ever worked hardships?

2. Ought all civil rights to be national instead of part national and part state? Give arguments for and against the nationalization of civil rights (cf. § 249).

3. Is there any connection whatever between personal liberty and guarantees of rights by the states, *i.e.* would personal liberty be endan-

gered by nationalization of civil rights? Why have most of the people of the United States in the past held that it would?

i. What provisions of the national bill of rights are of especial value? What ones belong almost solely to history? Are any a disadvantage at present? If so, which?

Rights under the State Constitutions and Laws (§§ 563–570)

a. Look up the method of procedure in criminal cases, in suits at law, and in equity; consult Willoughby, *American Citizenship*, 94–109; Dole's *Talks on Law*, chaps. IV–VIII, XII; Andrews, *American Law*, Parts III, IV.

1. Make a comparison of an eighteenth-century bill of rights with a recent one; of your first one with the one of to-day.

2. Is there too much license in speech and writing? What should be the proper limit between proper freedom and too little restraint? Under what circumstances, if any, ought the truth to be considered libellous?

3. How can private parties take property for a public use? What constitutes a public use? Should the courts or the legislature determine what is, and why?

i. Is your bill of rights long or short, general or specific? What provisions of the United States Constitution are copied? Are all of the national prohibitions upon the state repeated?

ii. Give the provisions regarding religious freedom, freedom of speech, right in trials, property rights, and any others of importance.

iii. If possible, visit a courtroom and witness a trial. Learn the steps necessary to begin a civil suit. Notice the difference in procedure in criminal cases, in suits at law, and in suits in equity.

The Jury System (§§ 571–573)

a. Notice the advantages of the jury system as given by Lieber, *Civil Liberty and Self-government*, 234–237; H. H. Wilson, in *Popular Science Monthly*, XXIV (1883), 676–686; and Townsend, in *Forum*, XXII (1896), 107–116.

b. Compare the above with the accounts of E. A. Thomas, in *Forum*, III (1887), 102–110; C. H. Stephens, in *Popular Science Monthly*, XXVI (1884), 289–298.

1. What reforms in the present jury system seem to be demanded? Can you suggest a suitable substitute for the jury?

2. Look up the origin of jury trial. When did it originate? Where? What changes has it undergone?

i. What is a grand jury? Is more than one held in your county each year? If not, what does it do? If so, what are the tasks of each?

ii. How are jurors selected for a term of a court? How for a particular jury? Are they paid? If so, how much? Who are exempted in your locality?

CHAPTER XXV

TAXATION

General References

Hinsdale, *American Government*, 194–198. On national taxes.
Bryce, *American Commonwealth*, 356–365. On state finance.
Shearman, *Natural Taxation*. Defects of present system, and new one proposed.
Roberts, *Government Revenue*.
Wells, *Theory and Practice of Taxation*.
Ely, *Taxation in American States and Cities*. Interesting facts, figures, and suggestions.
Plehn, *Public Finance*, Part II, chaps. IV–IX. The most satisfactory brief account of American taxes.
Daniels, *Public Finance*.
Bastable, *Public Finance*, Books III and IV. The principles of taxation and different kinds of taxes, especially European.
Seligman, *Essays in Taxation*. Brief treatment of the general property and inheritance taxes, with full discussion of corporation taxes by a very high authority.
Adams, *Science of Finance*, especially 286–516. Theoretical and practical consideration of taxes, particularly American.
Cooley, *Taxation*. The law of the subject.
Howe, *Internal Revenue System in the United States*.
West, *The Inheritance Tax*.
Jones, *Federal Taxes and State Expenses*.

Importance of taxation.

574. **The Question of Taxation.** — We may not fully agree with those writers who hold unjust and arbitrary taxation responsible for the great revolutions of history, with their resulting contributions to the progress of mankind; but the present interest of a subject so closely connected with the pocket-book of practically every citizen, and its future importance as a possible means of solving some of the problems of society, cannot well be questioned.

It should be according to ability to pay.

Adams, *Science of Finance*, 328–332.

575. Characteristics of a Good Tax. — There are certain characteristics that every tax should possess. Among these five are especially important. (1) It should be according to the citizen's ability to pay. It is now generally felt that ability should be the test of the amount paid in taxes, because it is a social duty for the individual to contribute to the support of the government in proportion to his means. But there is still a great deal of disagreement over the best way to determine ability, some favoring the net income, others the gross income, and a third set the value of the property a man owns. (2) The times and methods of assessment and collection should not be arbitrary, but fixed and known to all. (3) The tax should be as little felt as possible. All of the burden should not be placed upon a single class, as in many of the French taxes just before the great Revolution. An old but defective tax is often less felt than a new, though much better tax. Changes should, in consequence, take place only when the good to be derived clearly overbalances the difficulty the people encounter in adjusting themselves to the change. (4) It should be easily administered. It should not be so hard to assess the tax that a premium is placed on dishonesty. No tax can be easily administered that does not meet with the support of the people, or of which the cost of collection is great. (5) It should be suited to the district for which it is assessed. The absurdity of allowing cities or even states (commonwealths) to levy customs duties or internal revenue is clearly apparent, while a general land tax would be about as little suited to the purpose of the central government.

Other characteristics.

Bastable, *Public Finance*, 382–391.

Tax systems.

Bastable, 256–258.

576. Tax Terms. — By a *system* of taxes we mean the sum total of all of the taxes levied by any one government. In most countries there are two tax systems: the national and the local; in this country we have three: the national, the state, and the local. Now, as a matter of fact, no one tax is likely to possess all of the characteristics we have just enumerated. But if no tax is seriously defective, and if the system as a whole conforms to these characteristics, the tax system might be

said to be good. But in order to be satisfactory, a tax system must do more than that. The systems of the nation, the state, and the localities must not conflict or greatly overlap, while each system must be adapted to the peculiar needs of its government, as shown in the expenditures of that government.

Direct and indirect taxes.

Taxes are either direct or indirect, but a great deal of confusion has been occasioned by the use of these words in different senses. The one most common speaks of *direct* taxes as those which are actually paid by the person upon whom they are assessed, as ordinary land, house, and "personal" taxes. *Indirect* taxes are those levied upon imported goods, and most forms of internal revenue where the person paying the tax adds the amount of it to the price of the goods, and the tax is really paid by the purchaser. Most authorities agree that the expression "direct taxes" in the Constitution does not include all of the direct taxes just mentioned.

Apportioned and percentage taxes.

When the total amount to be raised by a specific tax is ascertained beforehand, and the amounts for different localities are accurately stated, the tax is said to be *apportioned;* but if the tax rate, and not the amount, is given, so that the total revenue depends upon the value of what is assessed, we have a *percentage* or *rated* tax; *e.g.* the tax upon customs duties falls in the second class because the rate is specified, and the amount depends upon how much is imported.

Proportional and progressive taxes.

Finally, taxes may be proportional or progressive. If the rate is the same for the person who pays a small tax as it is for the one whose assessment is large, the tax is *proportional;* but when the rate increases with the assessment, *progressive* taxation results. *E.g.*, an income tax that exempts all persons with incomes of less than $1000 a year, charges two per cent on incomes between $1000 and $5000, three per cent on those between $5000 and $10,000, and so on to ten per cent on all annual incomes of over $1,000,000 is progressive. So also an inheritance tax, where the rate varies both with the amount of any single bequest and the relationship of the legatee, is progressive.

Bastable, 289–306.

Adams, 337–352.

Expenditures of national, state, and local governments.

577. The Cost of Government. — Before taking up the different tax systems of our country, let us consider for a moment the cost of all our governments to the people, in order to get a better idea of the amount of money required. For the fiscal year 1900 the national government spent $487,713,791.71 in addition to the receipts of the post-office. In 1895 the state governments expended $129,129,225, and the amount in 1900 probably exceeded

$150,000,000. The census of 1890 shows that the expenditures of local and municipal governments for all purposes aggregated over $460,000,000. In 1900 the total, including municipal investments, must have reached $650,000,000. This would make the entire expenditures of all governments for that one year nearly $1,300,000,000, almost all of which was raised by taxation.

Peace and war taxes of United States government.

578. **The National Tax System.** — A casual examination of national expenditure would show us that in times of peace more than one-half the money paid out by the national government is for the army and navy, for pensions and interest on the war debt. This proportion is of course vastly increased in time of war, so that the ability to meet this increase, wholly or in part, is one of the greatest needs of the national system. This need is largely met by the extensibility of internal revenue and other taxes. In time of peace the principal taxes that are used are customs duties and internal revenue, while taxes added during periods of danger include income and inheritance taxes.

In 1900 receipts from customs was $233,164,871.16, from internal revenue, $295,327,926.76, postal service, $102,354,579.29, and the total reached $669,595,431.18, leaving a surplus for that year of $79,527,060.18.

Three periods of national taxation.

Howe, *Internal Revenue*, 1–8.

579. **History of National Taxes.** — Roughly speaking, national taxation has passed through three periods. The first of these was brief, from 1789 to 1802, during which various forms of customs duties and internal revenue were used, and experiments were made with direct taxes on lands, houses, or slaves; besides taxes on auctions and carriages. The second, from 1802 to 1861, was marked by an almost exclusive dependence upon duties, except for brief periods when heavy expenses rendered more revenue imperative. The third dates from the beginning of the War of Secession, at which time internal revenue was reincorporated into our national system and various war taxes were introduced, notably that on incomes.

580. Operation of Customs Duties. — Taxes upon imports have been the chief reliance of the national government. They have been used from the start for the double purpose of raising revenue and affording protection to industry. Because of this double purpose the tax, *as a tax*, has often increased the difficulties that customs duties always cause: that of making the poor pay much more than their share of the tax. As the greater part of the duty is paid upon goods bought by all classes, the man with an income of $10,000 probably does not pay more than three times as much as the man with an income of $500 a year. This is certainly unfortunate, especially if the duties are heavy, for the poor man ought to be exempt as far as possible from all taxation. To counterbalance these disadvantages there are certain nominal gains derived from this, as from all indirect taxes. As the duty is paid by the importer, the purchaser does not realize when the tax is a part of the price he has to pay, or what part of the price is a tax. The burden of the tax is therefore little felt.

Merits and demerits of taxes on imports.

Plehn, *Public Finance*, Part II, chap. VII.

Bastable, 512–532.

In connection with this paragraph the discussion of the other sides of the tariff (§§ 606–610) should be considered.

581. Internal Revenue. — At present internal revenue is quite as valuable as the duties, while it is likely to be even more used in the future. The three chief sources of internal revenue proper have been distilled spirits, fermented liquors, and tobacco, the custom being to increase the rate upon these three and add new schedules covering various business transactions whenever the need arises. All of the advantages of indirect taxes are claimed for them, besides the merit of restricting the sale of articles on the whole injurious to the community. In case of war they are especially valuable, for foreign commerce is likely to be reduced in amount, while the tax rate on domestic industry can be greatly increased without seriously crippling business. Everything considered, they are the most satisfactory national taxes we have tried.

Bases and advantages of our excise taxes.

Plehn, Part. II, chap. VI.

Other internal taxes considered later deal with incomes and inheritances.

Excise taxes in United States since 1791.

Howe, *Internal Revenue*, 9–38.

582. History of Internal Revenue Taxation. — The first internal revenue taxes were levied upon distilled spirits in 1791 at the instigation of Hamilton. The law was modified the next year, but its attempted enforcement led in Pennsylvania to what is known as the whiskey rebellion (1794). The same year as this revolt, separate internal taxes upon carriages and auctions were created, and later (1797) stamp taxes were first used. All of these, as well as the direct taxes adopted during the same period, were repealed in 1802.

The War of 1812.

Howe, 39–49.

It was not until 1813 that the inadequacy of the revenue forced Congress to return to some form of internal taxation. The new schedules included liquor taxes and licenses, stamp duties on legal instruments, carriage and auction taxes: in short, the whole scheme was copied from the Federalists. These taxes lasted four years.

The Civil War.

Howe, 50–81.

During the War of Secession no tax that we should call internal was assessed until 1862. On July 1 of that year an omnibus bill, foreshadowing the system which was to include everything and everybody, was adopted by Congress, but the rates were much lower than those accepted later. Among other provisions were those for the taxation of all kinds of liquors, corporations, inheritances, incomes, stamp taxes on business papers, and taxes on business in general and every operation in the process of manufacturing. Subsequent laws increased the rates and added new sources of revenue, especially that of June 30, 1864, and no reduction was attempted till 1866, though by 1869 the amount of revenue from this source was but one-third what it was in 1866. However, the difficulties encountered because there had been no taxes of this kind before 1861 are apparent when we notice that in 1864 the total from internal revenue and income taxes was but $110,000,000, while in 1866 it had risen to $311,000,000.

Recent internal taxes.

Howe, 214–233.

From 1868 to 1898 the only important internal revenue taxes were upon distilled or fermented liquors and tobacco. With the outbreak of the Spanish-American War in 1898 the rates on these articles were greatly increased and new schedules added, those creating stamp taxes on certain kinds of manufactured articles and upon business papers being the most profitable. Most of these new sources of revenue have been dropped (1901).

Taxation of incomes in other countries.

583. Income Taxes. — Although we have no income tax at the present time, the recent efforts made to levy one (1894), the fact that we had such a tax for ten years, and

that some form of this tax is levied in the most advanced countries of Europe make it worth while to consider it for a moment.

Income taxes of the Civil War.

Howe, 90–102.

The income taxes of 1861–1872 grew out of the pressing need for revenue, and did not greatly consider whether the tax itself was good or not. At no time were incomes under $600 included, and the progressive principle was recognized most of the time, so that in the heaviest tax levied incomes between $600 and $5000 paid five per cent, those over $5000 ten per cent.

Proposed tax of 1894.

Seligman, E. R. A., in *P. S. Q.*, IX, (1894), 610–648.

The income tax of 1894 grew out of need for revenue, but many considered it purely a class tax, to make the wealthier members of society pay more than their share. No incomes below $4000 were assessed, but two per cent was levied upon all excess over $4000. The tax was declared unconstitutional by the Supreme Court because the Court believed it a direct tax, which was not levied upon the states in proportion to population, as directed by the Constitution.

Direct taxes.

Howe, 82–90.

584. **Other National Taxes.** — Direct taxes have been little used since the Constitution was adopted, having been voted only five times by Congress. The whole amount to be raised is specified, and the sums which each state shall contribute are determined by its population.

National corporation tax.

Conant, C. A., in *N. A. R.*, 190 (1909), 231–240.

In order to secure more revenue and avoid the constitutional difficulties encountered by income taxes, the national government passed (1909) a corporation tax law, levying a tax of one per cent on the net revenue of all corporations in the United States above the exempted minimum of $5000.

Inheritance taxes.

Howe, 114–120.

Bliss (ed.), *New Encyc. of Social Reform*, 621-624.

Inheritance taxes were tried twice by the national government in connection with the war for the Union and that with Spain. The earlier tax introduced the progressive principle only for relationships, the later one increased the rate both according to the amount of the bequest and the lack of blood relationship. Thirty-five states also levy taxes on inheritances, eleven of which recognize the progressive principle.

Direct taxes were voted in 1798, 1813, 1814, 1815, and 1861. The last was never fully paid, and the sums collected were returned to the respective states in 1891. The law of 1864 made the rate for the inheritance tax from one to six per cent; that of 1898 provides for a minimum of three-fourths per cent and a maximum of fifteen per cent. Many states also have taxes upon inheritances.

Percentage taxes.

Adams, 430–434, 467–476.

585. **Administration of National Taxes.** — The methods employed in the administration of these taxes are more or less alike. The government knows about how much money it needs, but it cannot levy the taxes by fixing the amount to be derived and then arranging the rate to correspond. The Ways and Means Committee of Congress, as we have seen (§§ 292–294), decides what the tax rate shall be on all articles imported or produced, so that the revenue of the government depends on the amount of dutiable goods imported or the quantity of liquor and tobacco manufactured. Duties are collected at the port where the goods enter the country, the goods being apprized and the tax collected by officials appointed by the government. For the administration of the internal revenue tax, the country is divided into internal revenue districts for each of which collectors are appointed.

General uniformity throughout United States.

586. **State and Local Taxes.** — There is of course a certain lack of uniformity in the state and local taxes used in different parts of our country, but because of many similarities and because the taxing power exercised by the cities and counties is really a grant of the state to those local divisions, we shall consider them together.

What it includes.

Seligman, *Essays in Taxation*, 54–59.

Plehn, Pt. II, chap. IX.

587. **The General Property Tax.** — The most common tax in the United States is what is called the general property tax. It is used by practically every state and by every subdivision of the states. It covers almost everything that makes up a man's wealth. It includes all real estate (land and houses), and usually all personal property such as household furniture, business stock, jewelry, money, bonds (except those exempt by law), credits, etc. Such a tax is well suited to a community where agriculture is almost the only occupation, and where in consequence cities and business

interests are few. There it is possible for the assessors to learn with some degree of accuracy what property a man owns, and little of his personal property will escape taxation. The fact that this tax was so well adapted to conditions one hundred years ago does not, however, prove that it is suitable for present needs.

Evasion of payment on personal property.

Adams, *Finance*, 436-445.

Seligman, 27-37.

588. **Difficulties in assessing the General Property Tax.** — The most serious difficulty is encountered when the assessors try to determine what each man's assessment shall be. The houses and lands cannot run away, and the estimate of their value over a small area, such as a county, is comparatively simple. But it is something quite different to ascertain the true valuation of personal property. Citizens can easily misrepresent the value of many articles, while others, like bonds, may be entirely concealed. The law tries to prevent such an evasion by compelling every property owner to make out a sworn statement or tax list stating just what he possesses, and often stating what it is worth. Although heavy penalties are prescribed for those who return a false statement, it is the custom everywhere to leave out those items whose omission would not be especially observable. As these statements are made the basis of the assessors' estimate, the assessment lists usually show the same omissions as the statements, though the assessor is not bound to follow them.

The poor man pays much more than his share.

Adams and Seligman, as above.

589. **Defects of General Property Tax.** — Since the general property tax can be so imperfectly assessed over even a small area, it leads to gross inequalities in the burden it places upon different persons. Those who have a great deal of land, with very little other wealth, have their property assessed at perhaps seventy per cent of its market value, while the capitalist who has put his money into railway stock may pay taxes on less than twenty-five per cent of his wealth. This inequality is the more glaring because it weighs heaviest on the class least able to bear it — on those engaged in agriculture. It makes the poor man in the city pay more than his share in taxes on his little home or

indirectly through rent, while his richer neighbor contributes much less in proportion to his means, although he is abundantly able to give a much larger part of his income.

Inequalities of the general property tax over large areas.

Seligman, 24–26.

Adams, 445–449.

590. **Equalization.** — These difficulties and inequalities apply to both large and small areas. Another problem confronts us when the area is of any considerable size. After the town assessors have completed their work, it is necessary for some body of men in the county to take the assessments from the different towns and make sure that the assessment in town A and in town B is made at practically the same per cent of the actual value. This body is called the Board of Equalization. If it happens that the assessment in town A seems to be at fifty per cent and that of town B at eighty per cent, while the average for the county is seventy per cent, they will necessarily raise the assessment in town A and lower that in B before the county tax is levied. But it is almost impossible to learn with any exactness such differences; and when it can be done, the attempt to equalize the discrepancy is more often than not only partially successful. The same difficulties much increased are encountered by the state board that attempts to equalize the assessments from the different counties. Thus it often happens that a county in one part of the state pays state taxes on an assessment from twenty-five to sixty per cent higher than the average of the state for the same kinds of property, and it may be that the evasion of the personal property tax by others will make this one county pay more than twice as much in proportion to its wealth as the average of the state.

Problems in the taxation of corporations.

Adams, 449–466.

591. **Corporation Taxes.** — Many states are now making an effort to pay their expenses without using the general property tax, leaving that entirely to the localities. These have recourse especially to corporation taxes, levied upon certain classes of private corporations, such as banks, railways, insurance, telephone, and manufacturing companies. The tax has not been used long enough to make the methods of assessment at all uniform. In some cases it is assessed upon the capital stock or upon the supposed value of the

franchise, in others upon the gross or net earnings, or upon the dividends declared. The tax is certain to fill an important place in the state systems of the future, as it does in the systems of the most progressive countries of Europe. The growth of industrial as distinguished from agricultural communities means that the general property tax must be discarded; and that separate taxes, like the corporation, real estate, and business taxes, will probably take its place. The things most necessary in making such a change are to see that each person shall be asked to pay, just as far as possible, in proportion to his ability, that changes shall be suited to the conditions, and that the burden placed upon industry shall not be so heavy as to interfere with the general prosperity of the community.

Local assessments.

Seligman, 340–358.

592. **Special Assessments.** — Our cities make very frequent use of what might be termed a form of tax, usually called a special assessment. When a street is to be opened or improved, when a sewer is to be put in, or a sidewalk laid, instead of paying for all of the expense out of the city funds, a special assessment is made upon the property that will derive the greatest benefit from the improvement. In most cases this is the property immediately adjacent, but may be understood to mean a larger district in which the rate of assessment varies with the distance from the improvement.

QUESTIONS AND REFERENCES

National Taxes (§§ 574–585)

a. On the income tax of Great Britain, see Bastable, *Public Finance*, 447–450, and Cohn, *Science of Finance*, 488–494. On those of the states, Seligman, "Colonial and State Income Taxes," in *P. S. Q.*, X (1895), 221–247.

1. Should taxes be levied according to a person's ability to pay, or according to the benefit he derives from the expenditures of the government? Should they be progressive or proportional? What is the best test of ability, and why?

2. Apply the test of a good tax (§ 575) to the different national and state taxes, and notice what characteristics each has or lacks.

3. Should we have a national income tax like that of Great Britain? like that of Germany? Are the chief objections to an income tax constitutional, theoretical, or practical?

i. What articles imported are taxed heavily purely for the sake of revenue? Does the principal burden fall on the articles of luxury or necessity?

ii. By the present law what is the tax on spirits, malt liquors, tobacco? Is there any stamp tax now on commercial transactions? What other articles are subject to an internal tax?

iii. What other countries now have inheritance taxes (Bastable, 549–562)? What is the smallest bequest taxed in our present law? What is the lowest rate, and to whom? the highest?

State and Local Taxes (§§ 586–592)

a. Compare the opinions upon the single tax given in Shearman's *Natural Taxation*, 115 *et seq.*, and in Lusk's "Single Tax in Operation," *Arena*, XVIII (1897), 79–89, with those expressed by Cohn, *Science of Finance*, 374–381, and by Seligman, *Essays in Taxation*, chap. III.

b. For suggestions that may prove valuable to the tax systems of the future, consult Seligman, "Recent Reforms in Taxation," chap. X of his *Essays;* Adams, "Suggestions for a Revenue System," in his *Finance*, 490–516; and Ely's "Taxation as It Should Be," Pt. III of his *Taxation.*

1. Why is the general property tax so universal if its defects are so numerous? Can the defects be remedied by proper administration? Has this anywhere been done?

2. Can a land tax be successfully operated over a large territory? Give your reasons in full. What is the best means of reaching personal property? Can it be done by a local tax?

3. What are the objections to a locality's assessing income, inheritance, or corporation taxes? to a state's using any or all of these unless other states do the same?

4. Have the ruling classes ever paid their full share of the taxes? Is there any danger that democracy may seek financial reform through attacks upon the rich? How may taxation be used in the future to solve some of the problems of society?

For the following, see state political code and finance reports.

i. What proportion of your expenses in state, county, and city are paid by the general property tax? Upon what is it legally assessable? Compare the assessment upon real estate with that upon personal property for your county. What part of the latter probably escapes notice? What is the tax rate for the city? the county? the state?

ii. Who is your assessor? Does he assess for both town and county? Have you county and state boards of equalization? If so, how are they chosen? How may any assessment be lowered?

iii. If you have a state corporation or franchise tax, learn whether the assessment is made upon the gross receipts, net receipts, or something else, and ascertain, if you can, how successful the tax is. Have you any other taxes? If so, what? Give an account of each.

CHAPTER XXVI

MONEY

General References

Willoughby, *Rights and Duties of American Citizenship*, 281–292.

Gide, *Political Economy*, 186–235. On the economic aspects of questions relating to money.

White, *Money and Banking*. Presents from gold standpoint a good historical summary of the experience of the United States with bimetallism, paper money, and banking.

Watson, *History of Coinage in the United States*. On the history of the great coinage laws.

Knox, *United States Notes*. Especially upon greenbacks.

Bullock, *Essays in the Monetary History of the United States*.

Gordon, *Congressional Currency*. Historical.

Noyes, *Thirty Years of American Finance* (1865–1895). Emphasizes the connection between business and government finance.

Laughlin, *History of Bimetallism in the United States*. The best history of the subject from gold monometallist point of view.

Andrews, *An Honest Dollar*. Advocates free coinage of gold and silver at a fixed ratio.

Walker, *International Bimetallism*. Principally historical.

Giffin, *The Case against Bimetallism*.

Darwin, *Bimetallism*.

Taussig, *Silver Situation in the United States*, to 1893.

Abundant literature in periodicals from 1892 to 1900, most of which is controversial.

593. The Two Functions of Money. — Money performs two entirely distinct functions in the world of business. It is a *medium of exchange* in everyday transactions, it also serves as a *standard for deferred payments*.

Money as a medium of exchange.

(1) Instead of trading one thing directly for another, as, *e.g.* five sheep for a cow, persons who buy or sell use some third substance, which is given in payment for an article re-

ceived, or accepted in place of anything sold. Since the person who has cows for sale probably does not care to buy sheep, the convenience of a regular medium of exchange which is good anywhere and at all times for the purchase of anything he may desire is of the highest value. This function is performed by currency, or substitutes for currency.

Gide, *Pol. Economy*, 186–191.

(2) The money of to-day is, in addition, a standard for deferred payment. If a man borrows $5000 to-day, to be paid in ten years, it is very important to the lender that he obtain at the end of that period a sum equal to what he loaned, and to the borrower that he be not obliged to pay more. The answer to the question how we shall ascertain what amount is exactly equivalent in ten years to the $5000 is always that the same number of dollars in legal money shall be so considered unless the parties in the contract agree upon something else. One thing ought to be carefully noticed. These two functions are not necessarily performed by the same substance — money — for it may be felt that $5000 in ten years will be worth more or less than the same number of dollars now, whereas some other commodity might be found which would make it possible in the ten years to return exactly what was borrowed, therefore that other commodity is used as the standard of value in deferred payments.

Money as a standard for deferred payments.

The reason why coin is used for both of these purposes is, it is the most convenient medium of exchange, and because its real value fluctuates less than that of almost anything else.

594. Government and the Money System. — In order that people doing business may have a currency upon which they can rely, this whole subject is left to the charge of the government, with the idea of obtaining the best results for all concerned. The duty of government is not, then, to select any medium of exchange it pleases, or arbitrarily to legalize some standard without considering whether it is adapted to the conditions; but to learn what medium best serves the needs of the nation, and to protect the rights of those doing

Government designates what system of coinage and what coins shall be used.

business for a long or short time. This work is largely negative and calls for as little interference as possible with the coin of the realm; but requires, among other things, that the government should decide whether the country have monometallism or bimetallism, what shall be the weight of the coins in use, what paper money, if any, shall be issued by the government, and whether this shall be supplemented by bank notes, — certainly a very wide and important field of legislation.

The legal ratio and its workings.

Gide, *Pol. Economy*, 194–198, 202–206.

595. **Effect of Bimetallism.** — A nation has a bimetallic system when its mints are open to both gold and silver, and any one having gold or silver bullion may take it to the mint and have it coined into dollars or any other coin authorized by law. But in order that this may be possible, the government must first tell how many grains of pure silver will make a dollar, and how many grains of gold a dollar contains. In other words, the government must establish a *legal ratio*, stating, for example, as ours did in 1792, that it considers one ounce of gold equal in value to 15 ounces of silver, and that, consequently, $24\frac{3}{4}$ grains of gold or $371\frac{1}{4}$ grains of silver (fifteen times as much), if presented at the mint, would be coined into dollars. If this legal ratio happens to coincide exactly with the market ratio, that is, if one ounce of gold is actually worth in ordinary transactions 15 ounces of silver, both kinds of bullion will be brought for coinage. If the legal and market ratios differ, only one kind of bullion will come in for this reason. Assume that 24 grains of gold are worth as much as $371\frac{1}{4}$ grains of silver, then a person would certainly be foolish to take $24\frac{3}{4}$ grains and have it made into a coin that would be worth exactly the same as the $371\frac{1}{4}$ grains of silver. He would, in short, put in 103 cents and take out 100, because the silver dollar is legally worth 100 cents. Hence, it comes about that when the market ratio differs from the legal ratio, only one metal is coined at a time, the other metal being worth more in the form of bullion than in the form of coin. Consequently, under a bimetallist system, since the legal

ratio is almost never exactly the same as the market ratio, only one metal is likely to be coined at a time.

596. **Advantages and Disadvantages of Bimetallism.** — Two things need to be considered in this connection that affect the practical usefulness of bimetallism. (1) The market ratio does not greatly depend upon the legal ratio, *i.e.* the legal ratio must accommodate itself to the market ratio, and not the reverse. Why? Because the value of gold and silver, like that of everything else, depends upon the demand for and the supply of each. The demand for both metals comes largely, but by no means wholly, from the governments of the world. If the demand were constant and the supply uniform, few difficulties would arise; but this is the exception, marked changes in the market value of each, and therefore in the market ratio of one to the other, being more frequent.

Difficulty in maintaining a correct legal ratio.

Gide, 198–202.

(2) Under a bimetallist standard, while but one metal is likely to be coined at a time, this metal is the one whose value has decreased. But the coinage of this one increases the demand for it, and tends to raise the price of every ounce of it. If the market ratio is but little different from the legal ratio, this demand will bring the two ratios together. Then if the second metal is coined for a time, because "cheaper," a like result follows. Consequently, the price of the one coined, *i.e.* the cheaper one, will not increase indefinitely, but only until its price is high enough so that the other becomes the cheaper. By this process of a demand first on the supply of one and then on that of the other, it is not possible for the price of either to go on rising continuously, for as soon as it becomes the dearer metal the demand is greatly diminished. Bimetallism, therefore, prevents a great rise in price of either metal, and draws upon the world supply of both for its stock of coins. Yet experience proves that the market ratio does not rapidly approach that established by law, as we can see below (§ 598), where the two were not very dissimilar; and as gold and silver are easily shipped from one country to another, the market ratio is

Advantage of using the world supply of both gold and silver.

never likely to become the same as the legal one unless there is a uniform international ratio and an international demand. The great advantage of bimetallism, namely, that it tends to use from the world's stock of both metals, can be perfectly obtained only under these conditions.

Explanation of terms *dearer* and *cheaper metals*.

In the paragraph just given, the expressions *dearer* and *cheaper metals* are used. They mean merely this: that if the legal ratio is 16 to 1 and the market ratio 20 to 1, then in the market one ounce of gold can be exchanged for twenty ounces of silver, so that silver is cheaper than the law-making body believed it to be when they established a legal ratio of 16 to 1, gold being dearer. If, on the other hand, one ounce of gold is worth only twelve ounces of silver in the market, gold is the cheaper metal and silver the dearer one. If the legal ratio is 16 to 1, and that of the market 12 to 1, under bimetallism only gold (which is then cheaper) will be coined until the market ratio exceeds 16 to 1; but if the market ratio is 20 to 1, silver only will be coined till such a time as the increased demand for silver shall increase its value as compared with gold, and the market ratio becomes less than 16 to 1.

Nature of monometallism.

597. **Monometallism.** — When the mints of a country are open to the free coinage of but one metal, that nation has a legal monometallic standard. It does not then trouble itself about the market ratio between the two metals, but fixes the number of grains in its various coins, and permits any one to exchange for the coin desired that amount of the metal which is preferred by the government. The chief disadvantage of this system is that it makes an extra demand upon just one metal, so that the value of an ounce of that metal is likely to increase continuously, and not, as under bimetallism, until a definite limit is reached. For example, under monometallism the actual value of a dollar (measured by what it can purchase) may increase at the rate of one per cent a year, so that a person borrowing $5000, at the end of ten years would really pay back $500 more than he received. The number of dollars repaid would be only 5000, but they would be equal in actual value to $5500 at the time the loan was made. This defect may be avoided partially by having the government buy and coin some of

Chief disadvantage.

Gide, 207–211.

the other metal. This can be done only when each coin of the second metal would possess less value as bullion than similar coins of the first; that is, if gold is subject to free coinage, a silver dollar that contains a smaller amount of silver than can be purchased in the market with a gold dollar may be issued by the government, provided the government guarantees that it shall be accepted by the government and by the people on a par with the gold dollar; but if the silver in this same dollar is worth more in the market than the gold bullion in the gold dollar, no one would pay his debts in silver coins, but would sell the silver in them for gold, take the gold to the mint, and get coins for it.

Disadvantage partially removed by subsidiary coinage.

White, *Money and Banking*, 33–37.

598. **Mono- and Bi-metallism in the United States (1792–1870).** — What has been our experience with these money systems? The first definite action taken by the national government was in 1792, when, upon the recommendation of Hamilton, it was decided to have free coinage of both gold and silver at a ratio of 15 to 1, which was a little less than the market ratio then and later. The weight of the silver dollar was fixed at $371\frac{1}{4}$ grains fine, and of the gold dollar at $24\frac{3}{4}$ grains of pure gold, with alloy added in each. As there was very little gold or silver in this country the coinage was light, and the coins produced were almost all exported.

Ratio of 15 to 1 (1792–1834).

Watson, *Coinage in U. S.*, 53–77.

In 1834 the ratio was changed to practically 16 to 1, which was higher than that of the market, bimetallism being retained. The silver dollar contained the same amount of pure metal, but the gold dollar was reduced in weight to 23.22 grains fine. A very great increase in the coinage of gold followed, while that of silver dropped off. After 1850 the gold production in California increased the supply of that metal to such an extent that an ounce of gold would sell for less than $15\frac{1}{2}$ ounces of silver in ordinary transactions, and silver bullion rarely sought the mint. In order to have fractional currency for business, Congress in 1853 made the silver coins of a smaller denomination than one dollar lighter than they had been, and had the govern-

Laws of 1834 and 1853.

Ratio of 16 to 1.

Watson, 78–112.

ment buy the silver and make the coins. The silver dollar remained subject to free coinage, though it was worth more in the form of bullion than of dollars; so an American silver dollar was almost unknown at that period.

The law of 1873.

Gordon, *Cong. Currency*, 96–102.

White, *Money*, 213–223.

599. **"The Battle of the Standards"** (1870–1900).— The cheap paper money of the Civil War drove all metallic currency out of use for a long time afterward except at a heavy premium. While this condition lasted, it was suggested in 1870 that the free coinage of the silver dollar be discontinued. As only gold would have been coined even had we been on a hard money basis, the question awakened little interest, and in 1873 a law was passed which practically placed us upon a gold monometallic basis with free coinage of gold only. But the increase in the production of silver about that time, together with a reduction in the demand, because Germany changed to gold monometallism and France expected to do so, raised the market ratio above 16 to 1, and aroused a demand for renewed silver coinage.

Bland-Allison act of 1878.

White, 198–202.

This demand was recognized in the Bland-Allison bill of 1878. As originally proposed, it reëstablished bimetallism with a legal ratio of 16 to 1, and in that form passed the House; but in the Senate a change was made by which the government was to buy from two to four million dollars' worth of silver bullion every month and coin it into silver dollars. The compromise was accepted by the House and vetoed by President Hayes, but passed by large majorities over his veto.

Sherman act of 1890.

White, 202–208.

In 1890 the Senate passed a silver free coinage bill, which was altered at the wishes of the House much as the bill of 1878 had been by the Senate. As enacted into law, it authorized the Secretary of the Treasury to buy 4,500,000 ounces of silver a month, paying for it with a new kind of legal tender paper. Some of this bullion was to be coined. The law was repealed during the panic of 1893.

Act of 1900.

The House and the Senate could not agree upon a coinage law satisfactory to both till 1900, when the law considered below was passed.

600. Paper Money in our Early History. — Paper money has been used more than coin during our history. It has been of various kinds: (1) that issued by the government on its credit, (2) that given out by the government instead of coins which were then deposited in the vaults, and (3) that issued by banks with the consent of the government.

Three kinds of paper.

In colonial times the craze for cheap money spread through the country like epidemics, every colony issuing some form of paper at different times. This invariably depreciated. During the Revolutionary War and the Confederation, Congress and the state legislatures tried to make money by the printing-press, with such disastrous results that the constitutional convention of 1787 forbade the issuance of bills of credit by the states, and placed its stamp of disapproval upon similar action by the central government, though not forbidding it.

The colonies and the Confederation.

Upton, *Money in Politics*, 14–36.

White, 120–147.

As there was so little coin during the early national period and no government paper, most of the business was done with notes issued by the state banks or by the two national banks. Those of the latter were quite reliable, but the former never gained more than a local circulation, and were usually far below par, hampering trade to a very great extent.

Bank notes (1789–1860).

Upton, 42–66.

601. Paper Money since 1860. — During the Civil War the government was in such need of money that in 1862 and 1863 Congress passed three bills permitting it to issue $450,000,000 in legal tender treasury notes, popularly known as "greenbacks." These became worth so much less than gold that they drove all coin out of circulation, and remained below par until the government began to redeem them in gold, January 1, 1879. They were at first looked upon purely as a war measure of doubtful constitutionality, and after the war were retired rapidly till hard times made people cry out for the cheapest money they could get, preferably more greenbacks. Their constitutionality was denied by the United States Supreme Court in 1869; but this decision was reversed in the *Legal Tender Cases* a year later. In *Juilliard* v. *Greenman* (1884), an almost unanimous court

The greenbacks.

White, *Money*, 148–165.

Knox, *U. S. Notes*, 117–147.

Upton, 67–98.

Supreme Court decisions.

Upton, 157–170.

Knox, 156–166.

held that Congress might issue paper in time of peace as well as in war, and in what quantity it pleased.

Gold and silver certificates.

For many years we have had gold and silver certificates, which are issued in place of gold or silver coins, simply because the paper is easier to handle.

Establishment and character.

602. The National Banking System.—A good part of our business is done with a form of paper issued by banks chartered under national law. The present national banking system is an outgrowth of the exigencies of the Civil War. The government desired to find a market for its bonds, so the Treasury department was led to propose that national banks be permitted to issue notes if they would buy bonds of a slightly greater value than their total circulation of notes. These notes were not and have not since been legal tender, but each bank guaranteed to redeem its notes in legal money, and the value of the bonds, which were left with the government, was sufficient to insure payment in case the bank failed. Competition with the state banks was avoided by placing on the issues of the latter a tax of ten per cent; and general circulation of the notes was assured by the government's agreeing to receive them except in payment of duties, and not to pay them out for interest on the public debt or to redeem its own paper.

Upton, 111–126.

Gordon, 151–172.

White, *Money*, 406–418.

Emergency circulation.

In order to add flexibility to the circulation of the national banks, they are permitted to issue notes to the amount of $500,000,000, in emergencies, on payment of a tax of five per cent, increasing to ten per cent. These notes are secured by approved state, county, or city bonds or by specially approved commercial paper.

Laughlin, J. L., in *Jol. Pol. Econ.*, 16 (1908), 489–513.

The money system rearranged.

603. The Act of 1900.—The currency law signed by the President, March 14, 1900, reformed and systematized the whole money system of the United States. A number of its provisions deserve enumeration. (1) The gold dollar was made the standard unit of value, and all forms of money issued or coined by the government are maintained at a parity with gold. (2) The treasury notes of 1890 were to be retired as rapidly as possible, their place in circulation being

References at end of chapter.

taken by new silver coins or silver certificates. (3) Greenbacks that were paid into the Treasury were not to be reissued except for gold; while for the redemption of greenbacks a gold reserve of $150,000,000 is to be maintained, if necessary, by the issue by the Secretary of the Treasury, of bonds bearing not over three per cent. (4) In the office of the Treasurer of the United States two divisions known as the divisions of issue and redemption were created to facilitate business. (5) New regulations regarding the denominations of the different kinds of paper money and bank notes to be issued were enacted so that there should not be, for example, one-dollar bills in each form of paper, but that gold certificates should not be for less than $20 each, silver certificates only in denominations of $10 and less, and the others in like manner. (6) That portion of the public debt which consisted of three, four, and five per cent bonds payable on or before August 1, 1908, might be exchanged for thirty-year two per cent bonds. (7) National banks might be organized in small towns with a capital as low as $25,000, and were further permitted to issue notes to an amount not exceeding the par value of the new two per cent or other United States bonds deposited at Washington. It will thus be seen that the somewhat chaotic money scheme which existed before 1900 was simplified and reduced to a semblance of order in this most important money law.

Different forms of currency.

604. Present Forms of Money. — After 1902 there will be seven kinds of money in use. (1) The first includes the different varieties of gold coin. (2) The second covers the different forms of silver from the silver dollar to the ten-cent piece, the silver dime, quarters, and half-dollar pieces containing a smaller proportion of pure metal than the dollar. (3) The minor coins are the nickel five-cent piece and the cent. (4) The gold certificates and (5) the silver certificates furnish over one-fourth of the money in circulation; while the (6) treasury notes or greenbacks, and (7) the national bank notes complete the system, the notes of 1890 having been retired.

Subsidiary currency.

Noticing the figures given below we shall see that a large part of our currency depends for its commercial value upon the credit of the government. Only the gold is worth as much as its face value indicates.

The silver in the silver coins is worth less than half what the coins pass for every day. The notes issued by the United States are maintained at par by the willingness of the government to redeem them in gold. Therefore the actual value of these forms of money is less than the face value by an amount but little less than the entire stock of gold in the country. So that a large part of the value of United States currency is represented by national credit.

Legal tender quality of different forms.

The gold coins are legal tender to any amount, and the silver dollar is unlimited tender unless otherwise specified in the contract. Subsidiary silver coinage is legal tender to the amount of $10, but the nickel five-cent piece and the cent for only twenty-five cents. United States notes are a legal tender for the payment of all debts, public and private, except duties on imports and interest on the public debt. Certificates of the different classes are not legal tender, but are at any time exchangeable for the corresponding form of currency.

The amount of currency in the United States, October 1, 1900, is represented in the following table: —

	In Circulation	In Treasury	Total
Gold coin	$620,047,309	$230,131,162	$1,059,288,820
Gold certificates	209,110,349		
Silver dollars	71,176,265	6,907,343	498,349,343
Silver certificates	420,265,735		
Subsidiary silver	79,432,193	6,568,555	86,000,748
Treasury notes of 1890	67,600,188	113,812	67,714,000
United States notes	324,506,314	20,354,702	346,681,016
Currency certificates	1,820,000		
National bank notes	319,336,630	9,079,798	328,416,428
Totals	$2,113,294,983	$273,155,372	$2,386,450,355

The amount of the certificates is included in the totals under the form of currency for which they are a substitute, and no account is taken of the deposits made in the treasury to counterbalance these.

QUESTIONS AND REFERENCES

Monometallism and Bimetallism (§§ 593–597)

1. What characteristics must a good medium of exchange possess? Why is a metal better adapted for use as money than anything else? Why must it be a precious metal?

2. Can you suggest anything else whose value would be as stationary as that of gold, *i.e.* that would fluctuate less from year to year or from decade to decade? How would the price of wheat do as a standard of value for deferred payments? the average price of all grains?

3. What was the market ratio between gold and silver a thousand or more years ago? five hundred? fifty? last year? Does gold seem to have "appreciated" the last thirty years, *i.e.* is an ounce of gold really worth more now than then? What part of the recent fall of prices in different things may be attributed to the decreased cost through the use of machinery? through improved means of transportation? To what extent may it be due to the appreciation of gold?

4. Would gold monometallism be possible for all nations in the future if the output of gold becomes small? if the demand for gold increases still more, the gold production continuing as at present? If the gold output should cease, would we not be obliged to go back to bimetallism?

5. With the market ratio between gold and silver as at present, which metal would be coined if we had free coinage at a legal ratio of 16 to 1 or 20 to 1? What are the chances that the increased demand for silver by the United States alone (the other nations still clinging to the gold standard) would raise the price of silver and decrease the market ratio to 20 to 1? If it did not, what would become of our supply of gold coin?

History of Currency in the United States (§§ 598–604)

a. On the law of 1900, consult R. P. Falkner, in *A. A. A.*, XVI (1900), 33 *et seq.*; J. F. Johnson, in *P. S. Q.*, XV (1900), 482–507; F. W. Taussig, in *Quar. Jol. Econ.*, XV (1900), May; and J. L. Laughlin, in *Jol. Pol. Econ.*, VIII (1900), 289 *et seq.*

1. Show how the Treasury department has influenced the financial system of the United States. In what ways may it exercise its discretion in regard to our money system to-day?

2. Could we have had the industrial development of recent years without a national currency? What is the proper place of paper money in a national system of finance? What sections or occupations have always favored cheap money? Which ones desire a stable currency? Explain why this is so.

3. Would it have been wise to prohibit Congress from issuing paper money in times of peace? What danger is connected with this power to make its paper legal tender?

4. Is it better to have a large supply of greenbacks in circulation, or no government paper but a great many national bank notes? Do

we need a greater circulation of money than we now have? What percentage of the business of the country is done without the use of currency at all?

i. In what denominations are the different coins and forms of paper issued by the government? What kind of coin or paper in circulation represents a greater value than any other, *i.e.* which is the most common?

ii. What proportion of the money in the country is in the Treasury of the United States? In what form is most of this (do not count the silver and gold for which certificates have been issued)? Compare the amount of gold in circulation with that of silver (or silver certificates); with government paper; and with national bank notes. Are silver certificates or silver dollars used more in ordinary business?

CHAPTER XXVII

COMMERCE, INDUSTRY, AND LABOR

General References

General: —

Hart, *Actual Government*, 446, 458, 481–534.

Larned (ed.), *History for Ready Reference*, VII, 112–135, 395–401, 543–558, 638–647.

On foreign commerce: —

Gide, *Principles of Political Economy*, 291–355. International trade, and free trade or protection.

Lalor's *Cyclopedia*. Articles by Mason on "Protection," by D. A. Wells on "Free Trade," and by W. C. Ford on "Tariffs in the United States."

Taussig, *Tariff History of the United States*. Revenue tariff standpoint.

Stanwood, *Tariff Controversies in the Nineteenth Century*, 2 vols. Protectionist standpoint.

Annals of the American Academy, May, 1907; July, 1908. Questions related to the tariff.

On internal commerce: —

Hadley, *Railroad Transportation* (1885).

Johnson, *American Railway Transportation*. A good brief, general account.

Johnson, *Ocean and Inland Water Transportation*, 207–385.

Hendrick, *Railway Control of Commissions* (1900). European and American experience.

Dixon, *State Railway Control*.

Meyer, *Government Regulation of Railway Rates*, Part II.

Ripley (ed.), *Railway Problems*. Papers, court decisions, etc. on different phases of the subject.

On control of industry: —

Clark, *The Control of Trusts*.

Jenks, *The Trust Problem*, esp. chap. XI.

Prentice, *Federal Power over Carriers and Corporations*. Conservative point of view.

Ripley (ed.), *Trusts, Pools, and Corporations.* Application of the "case system."

Annals of the American Academy, July, 1908. Federal regulation of trusts.

On labor legislation: —

Wright, *Industrial Evolution of the United States.*

Stimson, *Labor in its Relation to Law.* The subject in outline.

Stimson, *Handbook to the Labor Law.* Principles and details of the law (1895).

Seager, *Social Insurance — A Program of Social Reform.*

Annals of Am. Academy, July, 1911. Payment for industrial accidents.

Employers' Liability Commission, *Reports*, in New York, Wisconsin, Illinois, etc.

In periodical indexes under Tariffs, Free Trade, Protection, Railways, Interstate Commerce, Trusts, Labor Legislation, Strikes, etc.

Government regulation of exchange and production.

605. Trade, Industry, and the State. — It is an idea long outgrown that the relations between a government and the production and exchange of a nation's goods is one existing solely for the sake of warding off actual dangers to trade and industry. Fortunately or unfortunately it has been the practice for some centuries at least to adopt every possible means to foster foreign commerce and domestic manufacturing, many of the means being artificial in the extreme, some of which were abandoned at an early date. At present the most prominent evidences of government interference in the interest of industrial and commercial development are the systems of restrictive tariffs in use by all of the great nations except Great Britain. Others that deal with international trade are reciprocity treaties already considered (§ 317), and the system of consular offices (§ 355) primarily for the purpose of aiding commerce. Regulation of domestic trade has not been tried very extensively, being intended rather to protect the individual from the great carrying companies than to stimulate exchange. The numerous state laws relating to industry and labor in like manner aim to keep large producers within bounds, for the protection of the public. There has been a notable increase in recent years in this restrictive and protective legislation.

Asserted merits of free trade.

Gide, *Pol. Economy*, 331–346.

606. "**Free Trade.**" — It is very far from our present purpose to do more than enumerate a few of the claims put forth by the adherents of protective and free-trade doctrines, but a question which has furnished so much material for political discussion deserves a word of comment. It is safe to say that the "free-trader" of America rarely believes in a complete abandonment of the protectionist system which the United States has used so long, but desires a minimum of protectionist duties, the bulk of the revenue being obtained from articles of luxury or things not produced in this country. He feels that if it is a good plan to have free trade within a country so large as ours, it ought to be beneficial to have few restrictions upon that between nations. He asserts that protection is professedly artificial and was at first intended to be used only until our industries had passed the "infant" stage, whereas the rate of duties has been increased instead of lowered. In his opinion this has raised the price of all commodities directly or indirectly affected by the tariff schedules, has prevented healthful foreign competition, and has diminished the amount of business done at home and abroad.

Alleged advantages of protection.

Gide, *Pol. Economy*, 310–331.

607. "**Protection.**" — The real protectionist looks at things in an entirely different light from the true free-trader. He believes that the disadvantages of production in a comparatively new country, including the higher wages paid here than in Europe, require just such an artificial barrier as a protective tariff to keep out foreign products. He claims that without this help we could never have developed the industries we have, nor could we have maintained a rate of wages much above that of Europe. The tariffs have limited importations, with their attendant evils. A competition we could not have met has been avoided. He admits that the cost of production has been raised and prices increased; but even when he does not feel that those are benefits in themselves, he urges that with low prices few persons would have been employed, and those at starvation wages, so that in the general prosperity which has come from protection,

high prices mean less of a burden than low prices would be under the low wages and less-developed industry of a non-protectionist system.

Tariffs from 1789 to 1815.

Taussig, *Tariff History*, 12–17.

608. Our Early Tariffs. — Although the right to levy duties upon imports was conferred upon the national government because of its value as a source of revenue, the first tariff under the Constitution (1789) recognized the need of protection of certain industries likely to be useful in time of war. The rate on most goods was only five per cent, and the highest was but fifteen, though, of course, the heavy freight charges of that day were in a sense an additional duty.

Tariffs of 1816 and 1824.

Taussig, 17–19, 68–79.

The protectionist principle, however, dates not from 1789 but from 1816, when the duties upon a large number of articles were raised in order that the different branches of industry started under the embargo and during the War of 1812 might be able to hold their own against the very large importations from Europe. The heaviest duties were those on cotton and woolen goods, which were twenty-five per cent. These were raised to thirty-three and one-third per cent in the tariff of 1824, which also protected more fully iron, wool, and hemp.

The tariff (1828 to 1843).

Taussig, 79–114.

Callender (ed.), *Econ. Hist. of U. S.*, 498–542.

The tariffs from 1828 to 1843 were dictated by other considerations than the economic needs or desires of any section, chiefly by the political opinions of a comparatively few persons. That of 1828 was a curious mixture of high rates for certain manufactures and raw materials, with little or no protection for the opponents of those in power; but its worst features were remedied in 1832, though not to the satisfaction of the South Carolinians, who objected to the continuance of what they claimed was a sectional measure especially injurious to their state (§ 177). Congress was induced to pass a new law which provided for biennial reductions in the rates, until in 1842 everything was brought to a level of twenty per cent. But this was supplanted in 1842 by a new and more protective tariff.

Tariffs of 1846 and 1857.

Four years later the opponents of the "American system" passed a so-called free-trade measure which placed duties

of twenty-five or thirty per cent upon the articles for which protection was chiefly desired. This remained in force till 1860, with some slight reductions in 1857.

Taussig, 114, 115, 156–158.

609. The Development of a highly Protective Tariff. — Just before the outbreak of the War for the Union a protective tariff was passed, the rates of which were raised several times during the war in order to give more revenue to the government, and more net protection to industry. As there were heavy internal manufacturing taxes, the rates became very high. The manufacturing taxes were taken off after the war closed, but the abolition of the internal tax led only to a temporary reduction in the tariff (1872), as the hard times of 1873–1875 furnished an excuse to reëstablish the old rates, except for such non-protective duties as those on tea or coffee.

Changes of the Civil War.

Taussig, 158, 170.

Acts of 1872 and 1875.

Taussig, 179–191.

The tariff of 1883 was a concession to a widespread demand for reduction in duties, but it made few essential changes in the protective system. Agitation for a tariff for revenue only failed to receive the support of the people, and the fifty-first Congress proceeded in 1890 to pass the most truly protective law in our history, commonly known as the McKinley Act. Sugar and a few other articles were placed on the free list, the growers of the former being aided by a bounty equal to the duty on sugar before 1890. Rates on all industrial products needing protection were increased, though the total revenue was intentionally diminished by the use of the large free list. In connection with the tariff was a reciprocity arrangement by which we might discriminate against nations that treated imports from the United States unjustly.

Tariff of 1883.

Taussig, 230–250.

McKinley tariff (1890).

Taussig, 251–283.

610. Recent Tariffs. — The losses sustained by the Republicans after the passage of the act of 1890 was held by the Democrats to be an expressed approval of their tariff programme. In 1894 the House accordingly agreed upon the Wilson Bill, which placed most raw materials upon the free list, and reduced the protective rates to some extent, an income tax being expected to furnish sufficient additional

Gorman-Wilson tariff (1893).

Larned (ed.), *Hist. for Ready Ref.*, IV, 3087–3089.

revenue for the annual deficit. The Senate refused to concur with the House, and the result was a compromise that was based upon no distinctive principles, which became law without President Cleveland's signature. The income tax feature was afterward declared unconstitutional by the Supreme Court.

Dingley tariff (1897).

Larned (ed.), *Hist. for Ready Ref.*, VI, 581–582.

This tariff was replaced in 1897 by a new tariff enacted for the double purpose of increasing the revenues and restoring something like the McKinley rates on raw materials and manufactured articles, with more complete reciprocity than that previously in use; but the new measure was in one respect radically different from that of 1890, in its duty upon sugar.

Payne-Aldrich tariff (1909).

International Year Book, (1909), 686–689.

Taussig, F. W., in *Quar. Pol. Econ.*, 24 (1909), 11–38.

The Dingley tariff stood without change until 1909, when the Payne-Aldrich Act was passed. This provided for a larger free list, reductions on some trust-made articles and reclassification of schedules which left the average rate about the same as before. These regular rates form the minimum list, which is granted to those countries making the United States substantial trade concessions. If there are any others, they are obliged to pay the maximum rates, which consist of the minimum rates plus twenty-five per cent of the cost of the imported articles. The law of 1909 provides for a Board of nine general appraisers before whom controversies over customs are taken, with appeal to the Custom Court of Appeals, the decision of the court being final. The law of 1909 also provides for a permanent Tariff Board.

Principles for future tariffs.

In the tariffs of the future it is to be hoped that the whole subject of revision may be left as far as possible to those whose knowledge and disinterestedness shall guarantee protection of the public welfare against the irregularities placed in tariffs, especially since 1828, for the benefit of special persons or interests. The creation of a Tariff Board of three members for the study of tariff problems is an important step in the right direction. The careful revision of each schedule separately, preventing the highly injurious system of bargaining between sections or interests, must precede

real tariff reform. These tariffs, whether highly protective or especially for revenue, ought to be the embodiment of definite and scientific principles, and not pieces of patchwork; while tariff changes should be no more frequent nor radical than the best interests of the public demands, for uncertainty in the permanence of schedules and rates may be more disastrous to business than a defective tariff.

611. Government and Domestic Commerce. — The inland trade of the United States has been aided or controlled by the state governments if conducted entirely within state lines, or by the national government when of an interstate character. At first, aid was given to railways by both the states and the national government, either in the form of land subsidies or loans of money. Help was given especially to the transcontinental railways (§ 638). Canals have more often been constructed by our governments directly, as in the case of the Erie Canal, the Panama Canal, and others.

Government aid to railways and canals.

Hadley, A. T., in Lalor, III, 820–822.

Johnson, *Am. Railway Transportation*, 307–321.

The problems of to-day regarding domestic commerce are essentially those of the railway. So important have the railways been in developing our resources of every kind, particularly in less settled regions, that until some time after the Civil War it was the policy of all the states to encourage, if not to aid, the extension of new lines. Railway speculation was therefore common, and we came to have not only numerous competing systems in the older states, but extensive ones over almost untenanted prairies. In consequence, rates were cut sharply between competing points, and raised for other places. The railways tried to protect themselves and put an end to this discrimination between places by forming combinations called pools. These pools also made it more difficult for great shippers to obtain rebates.

Problems of the railways.

Bullock, *Intro. to Economics*, 343–361.

Bogart, *Econ. Hist. of U. S.*, 305–311.

Johnson, *Am. Railway Transportation*, 213–243.

The state governments sought to protect the shippers and the public from unjust rates or discriminations. State commissions were created, often with power to fix maximum rates, and prohibit the formation of pools. These usually acted upon the theory that the railways could afford to carry freight from any and all points for the charges at which it

Beginnings of state control.

Hadley, *Railroad Transportation*, 125–129.

Johnson, 349–362.

was carried between two points that enjoyed competitive rates. Without trying to follow the direct and indirect effects of this control, we need notice only that it proved in many cases extremely disastrous to the railways, and hence injured the communities served by them.

Formation and work of the commission.

Adams, H. C., in *At. Mo.*, LXXXI (1898), 433–443.

Johnson, 367–385.

Lord, J. W., in *N. A. R.*, 183 (1905), 745–766.

612. The First Interstate Commerce Commission. — One difficulty encountered by these state commissions was that most of the lines ran into other states. As the regulation of interstate commerce is left to Congress, according to the Constitution, the commissions at first did nothing, and then attempted to apply the regulations made for purely state railways to those having interstate commerce as well. In 1886 the Supreme Court of the United States decided that this state regulation of interstate trade was illegal. The next year, therefore, the Interstate Commerce Act was passed, which declared that all pools affecting interstate trade were illegal, that no person should be charged more than another for a similar service, nor for a short haul than for a long haul, and provided for a national commission of five members to carry out the act, giving them power to investigate rates and pronounce them unjust if necessary. The commission succeeded in introducing a great many uniformities in financial and other methods; but it failed to prevent combination or to exercise a very satisfactory control over the roads.

Provisions of the present law.

Prouty, C. A., in *Rev. of Revs.*, 34 (1906), 65–70.

Ripley (ed.), *Railway Problems*, 531–556.

613. The Present Interstate Commerce Commission. — After years of agitation, both houses of Congress agreed (1906) on a new Interstate Commerce Act (amended 1910), which replaced that of 1887. The new commission, composed of seven members appointed by the President and Senate, has the power not only to declare rates "unreasonable," but to fix the maximum rate that shall be charged for the transportation of freight or passengers on interstate lines. It brings under the supervision of the commission all interstate "common carriers," a term which includes railways, private refrigerator cars, Pullman cars, express companies, and pipe lines (except for gas and

water), in addition to interstate telephone and telegraph companies. No railway may carry, except for its own use, articles of which it is the owner; nor, if a railway reduces rates to meet water competition, may it restore the old rates when the water competition has been removed.

Advantages of the new commission over the old commission.

The present commission can do much more than its predecessor, because it may supervise the classification of freight and can fix the maximum rate to be charged for transporting any class of freight between two points, although it cannot make all rates between those points just nor can it insure reasonable rates everywhere for the transportation of similar commodities. It may institute investigations on complaint or on its own motion. Its decisions are effective because they go into effect without great delay and the companies must sue the commission if they believe the rate fixed is too low. Under the old law the commission was obliged to secure the approval of the courts before its decisions were obeyed. There are no long delays as formerly, because all evidence must be presented to the commission, and appeals from the decision are considered at once by a special Court of Commerce, of five Circuit Court judges. Giving or accepting rebates is punishable by fine or imprisonment. Passes can be given only to railway officials, to employees, or to persons engaged in religious or charitable work. Private car and pipe line monopolies may be broken up.

Smalley, H. S., in *A. A. A.*, 29 (1907), 292–309.

Ripley, *Railway Problems*, 531–556.

Method of state commissions.

614. State Railway Regulation. — As with the subject of taxation, but to a greater extent, the difficulties of proper railway regulation are greatly complicated by our federal form of government; for the systems of state and national control must harmonize and work together if they are to be at all effective. Most of the forty-one state commissions have taken these facts into consideration, as they enforce laws similar to that of the United States, that is, they have the power to determine the maximum rates to be charged. To protect the shippers and the public, they have relied chiefly upon that means or upon the prohibition of pools.

Hadley, *Railroad Trans.*, 134–145.

Johnson, *Am. Railway Transportation*, 349–366.

Huebner, G. G., in *A. A. A.*, 32 (1908), 138–156.

A few are still publicity commissions, which have no power over rates or combinations. A constantly increasing number are public service commissions (§ 464), which not only regulate railway rates but control other public service corporations such as those that manage street railways or furnish public utilities like water and gas. That some regulation is essential to prevent unwise and unnecessary multiplication of railways, to avoid the worst forms of mismanagement, and to keep great transportation companies from using their immense power by sacrificing the public to their own ends, is apparent; but the exact methods to be applied best by state and national governments constitutes one of the most delicate and difficult problems of the future.

Restraint in the past.

Bogart, *Econ. Hist. of U. S.*, 400–405.

615. Government Control of Corporations. — The control of industrial corporations is an affair of the states, the national government having been given no jurisdiction of industry by the Constitution, except so far as industrial corporations are engaged in interstate commerce. In ante-bellum days, when factories were so small that each had a local rather than a national market, state regulation sufficed, though as a matter of fact little was attempted. One practice, however, became common even then, for almost all of the states ceased to pass special acts for each company that wished incorporation, but passed general incorporation laws under which a set of persons could begin business by fulfilling a few requirements. These general laws have been made more stringent as the corporations have become more powerful and have sold their productions in wider territories; but government control has not kept pace with industrial expansion, partly because incorporation in one state entitled the company to do business in all others, and in consequence the states with lenient laws have drawn to themselves an undue share of the corporation fees and papers, even when the main business of the corporations was conducted in other states. The influence of this and other practices was favorable to the development of industry without government restraint.

When a corporation is organized, it is obligated to file incorporation papers with the secretary of state, and to pay a regular fee for the privileges conferred upon it by law. But very few of the states have provided any means for determining whether the capital stock is paid up or is largely fictitious, or have suitable regulations which prevent the company from "watering" its stock, *i.e.* declaring the amount increased without putting in any more capital. The national government in 1910 created a commission to examine and supervise the issuance of all stocks and bonds by railways engaged in interstate commerce. Most of the states, however, require annual reports concerning the amount of business performed, the debt of the company, and other details; but unless there is a uniform system of keeping corporation accounts and proper means for enforcing laws framed to prevent fraud and protect the interests of the stockholders, the reports are of little or no value.

Present control of industrial corporations.

Ford, W. C., *Amer. Citizens' Manual*, 67–82.

Regulations for particular kinds of corporations are usually more rigid and better administered. Banks and loan associations are ordinarily subjected to exacting laws concerning capital, methods of making loans, and reserve funds; while insurance companies are even more strictly supervised by state boards or superintendents. Industrial incorporations are obliged to comply with many factory laws, especially concerned with the safety and comfort of the employees.

Miscellaneous corporations.

Whitten, *Trend of Legislation*, 417–419.

616. Evolution of the Trust. — Within recent years there has been a marked tendency to concentrate the capital engaged in industry in a few great companies. The first form was something like this. A number of corporations producing goods of the same kind placed the management of their affairs in the hands of a few persons, called trustees, who looked after their united business. They were often thus enabled to control a large part of the market, and by this combination to produce their wares more cheaply. As the courts decided that these combinations were illegal, the same end was later attained in a different way. The "trust" of the present retains the old name, but is in reality a huge corporation which has absorbed the smaller plants engaged in the same or in allied industries. The immense saving in the cost of production which can be made by permitting each plant to turn out that form of manufacture which it can do to the best advantage, would by itself insure very

Formation of trusts. Original and present forms.

Hadley, A. T., in *Atl. Mo.*, LXXIX (1897), 377–385.

Bullock, *Intro. to Economics*, 322–324, 331–335.

Bogart, *Econ. Hist. of U. S.*, 400–414.

great profits at the former prices; but the removal of practically all competition often gives the combination opportunity to charge more than before, if it believes that it can make more money by doing so.

Views regarding best method of control.

Hadley, *At. Mo.*, LXXIX (1897), 383–385.

617. Control of Trusts. — To protect the people from the very great power of these trusts has been one of the most prominent duties of recent state governments. The methods that have been used are as various as the views regarding the trusts themselves. One class of persons looks upon the trust as a monster, which could not have been developed without the help afforded industry by the national and state governments. They seek to destroy it by adverse legislation. A second class believes that the trust is a necessary evil, that the formation was inevitable, but that it should be restricted and regulated by every possible means. The more conservative members of this class have faith in the efficacy of legislation to keep the trust within bounds; the more liberal ones distrust government interference, and look to full and complete publicity as furnishing the best solution of the trust problem. Still a third class thinks that the trust is a public benefit because it abolishes the wastes of competition. As they are confident that the trusts will be forced for their own gain to lower rather than raise prices, they oppose all legislative restriction even if they do not desire government aid.

State anti-trust laws.

Hadley, in *Scribner's*, XXVI (1899), 604–610.

Walker, A. F., in *Forum*, XXVI (1899), 257–267.

More than thirty states have passed laws prohibiting monopolies, and making restraint upon production and trade illegal. A few have been able to enforce their anti-monopoly laws against the worst offenders. Some of the states, particularly in the West and Southwest, have gone so far that their radical laws if enforced must be injurious to general business, because ordinary combinations would no longer exist. As Dr. Whitten says (*Trend of Legislation in the United States*, p. 417): "The trouble seems to be that any law drastic enough to prohibit the trust will at the same time prohibit many forms of combination and organization recognized as highly beneficial. Thus far the labor organi-

zations have been the principal sufferers from the legislation intended solely to destroy trusts."

General means of national regulation.

618. National Trust Regulation. — As the national government has supervision of trusts only through the right to control interstate commerce, nothing was done until 1890, when the Sherman Anti-trust law was passed. Since then a Bureau of Corporations has been created (1903) in connection with the Department of Commerce (§ 372), and a corporation tax law has been passed (1909) which gives the national government opportunities to learn facts in regard to the business of corporations, small as well as great.

Sherman Anti-trust Act.

The most important anti-trust law is the so-called Sherman law. This states that "every contract, combination in the form of trust, or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is hereby declared to be illegal." At first comparatively little attention was paid to the law, either by the government or the corporations. It was invoked in 1894, to prevent labor organizations from interfering with the movement of trains engaged in interstate commerce. Later the Supreme Court broke up several illegal railway combinations, including the interesting Northern Securities Company. In these railway cases the Supreme Court made clear its position that the restraint was not necessarily unreasonable in order to be illegal. There has been in consequence considerable agitation for the amendment of the act permitting combinations to make agreements that are reasonable. The court, before 1896, declared that "any agreement or combination which directly restrains not only the manufacture but the sale of a commodity among the several States comes within the Anti-trust Act." A large number of the industrial trusts have been restrained under the act, the possibility of drastic action under the law being one of the most effective forces in the restraint of these trusts.

Ripley (ed.), *Trusts, Pools, and Corporations*, 263–272.

Prentice, *Federal Power over Carriers and Corporations*, 189–209.

Beck, J. M., in *A. A. A.*, 24 (1904), 95–110.

Larned (ed.), *Hist. for Ready Ref.*, VII, 116–134.

General tendency.

619. History of Labor Legislation. — Nothing points out more clearly the direction in which humanity has progressed during the last century or two than the changed attitude of

Wright, *Industrial Evolution*, 264–272.

government toward the employer and employee. It is a long way from the regulation of wages by English or colonial statute to the attempted suppression so common now of employers' combinations that aim to limit production and fix the prices of those products; but for labor it has been a succession of upward steps, taken with increasing rapidity as government has become more of the people and for the benefit of its largest class.

Specific benefits to labor.

Stimson, *Labor in Relation to Law*, 1–16.

Cleveland, *Democracy*, 352–375.

The restrictions upon labor in former times, however, were comparatively few, and due more to custom than to law. Those that had not been abolished before the Revolutionary War disappeared during the period following it; and, as trade and industry came to involve more extensive operations, the law was invoked not only to protect the employee, but so far as might be to improve his condition. Freedom of contract was guaranteed, the right of mechanics' liens was recognized, and a beginning was made in shortening the hours of labor for those in the employ of the national and state governments. Later, laws were passed declaring how many hours constituted a legal day, the number having been shortened by subsequent amendments.

General.

Stimson, *ibid.*, 16–39.

Larned (ed.), *Ready Ref.*, VII, 395–401.

620. Legal Protection of the Employee. — The law of to-day aims to give the employee every reasonable advantage, because he is less able than the employer to protect himself. The most common protective labor laws deal with the hours of labor, mechanics' liens, factory regulations, and employers' liability for injury received.

Hours of labor.

Stimson, *Handbook of Labor Law*, 43–65.

Many of the states limit the number of hours required for a day's labor on public work to eight or ten, and assert that the same number shall be a legal day's work for private parties; but by contract any male employee may agree to work any number of hours he chooses except in occupations, in a few states, where the employee's health is endangered, as in mining, or, in many states where the public would be exposed to danger, as in railroading. In the case of women and minors, the hours may be restricted in almost any business that the government desires (§ 622).

Factory legislation.

Wright, *Industrial Evolution*, 277–278.

Stimson, *Handbook*, 146–153.

Very few of the commonwealths where manufacturing is prominent have failed to demand that every company shall do certain things in order to protect the health and safety of those in his employ. Overcrowding is prohibited, fire-escapes are required, and boiler inspection is made obligatory. Statutes seek to prohibit sweat shops in those cities where they are common, or reduce their disadvantages as far as possible.

State labor bureaus.

Wright, 273–276.

About three-fourths of the states now have labor bureaus or special officials who gather statistics and information regarding the conditions of labor. These have rendered valuable service in calling attention to abuses in securing ameliorative legislation, and in enforcing factory and child labor laws.

Appalling numbers of accidents.

Bliss (ed.), *New Encyc. of Social Reform*, 4–7.

621. **Industrial Accidents.** — Among the nations of the earth the United States is conspicuous for the large number of deaths and accidents to its workers. This is true of all branches of industry, being particularly noticeable among railway employees and miners. Although we have no reliable statistics, it has been estimated that in the United States at least twenty-five thousand employees are killed and more than a half million are injured every year.

Liability of employers.

Stimson, *Handbook*, 161–166.

Bliss (ed.), *New Encyc. of Social Reform*, 445–448.

Eastman, *Work Accidents and the Law*, 169–206.

We have not done as much as most of the States of Europe in holding employers responsible for accidents to those in their charge. In the United States, the law ordinarily requires that some precaution must be taken to prevent accidents to employees whose work entails risk to life or limb. This is especially true of railways. In America, however, few of the states have provided laws that relieve the employees of the chief risk in dangerous occupations. Although our laws are much better than they were a few years ago, as Miss Crystal Eastman says, our present liability law "in many of its principles is unjust; in operation it uses up time, money, and good will, to little purpose; it furnishes small incentive for the prevention of work-accidents, and leaves well-nigh the whole economic burden of work accidents to be borne by the injured workman and his depen-

dents, with consequent hardship and privation. It is to be condemned from the standpoints of justice, method, and practical utility."

Compensation for accident.

Seager, *Social Insurance*, 65–78.

Bureau of Labor (U.S.), Bulletin, 74, 121–158.

Eastman, 207–220.

Sherman, P. T., in *Survey*, 25 (1911), 994–962.

On account of objections to the liability principle, many people advocate the adoption of compensation in the form of insurance for accidents like that of Germany, where the compensation is payable out of funds to which regular payments are made by the employer, and by the employee as well, for sickness or temporary disability. Others favor the English law, which lays the entire burden on the employer, the amount varying with the occupation and degree of disability. One state, New York, has substituted compensation for liability in dangerous employments, permitting compensation in others if employer and employee can agree upon a plan.

Unemployment.

Commons (ed.), *Trade, Unionism and Labor Problems*, 603–616.

Our governments have not yet devised any satisfactory scheme for that serious work-accident, unemployment. Five states have experimented with public employment bureaus, but without great success.

622. Attitude of Government toward Labor Disputes. — What is the attitude of the government toward labor unions, strikes, and settlement of disputes? Labor unions have the privileges of incorporation, and are allowed to govern their members by such methods as they see fit to use. But if combinations of labor seek to dictate to employers, or to prevent non-union men from working, or conspire against any person or set of persons, their acts are held to be illegal, and the parties committing them are responsible to the courts. Strikes are therefore perfectly legal when they are attended by no feeling of malice or by violence, but a boycott, or a sympathetic strike, — *i.e.*, one made by a union which has no grievance of its own, but which wishes to aid an allied labor organization, — is held to be in violation of law.

Strikes.

Wright, 283–287.

Stimson, *Handbook*, 194–220.

Adams and Sumner, *Labor Problems*, 187–206.

Arbitration and conciliation.

Compulsory arbitration of difficulties between employers and employees is not used in the United States, but there are several state boards of conciliation and arbitration and a

national board, which have often been able to prevent strikes and to adjust differences. In more than one-third of the states there are permanent boards on which employers and employees are represented equally. In some of these states investigation of disputes may be begun by the board, while, with one exception, they must offer mediation in case of actual or threatened strike or lockout. Cases are never arbitrated unless one party asks for arbitration, but if both parties consent, six states insist that the award must be accepted. Other states offer mediation through the state commissioners of labor, still others have local arbitration boards, and a few provide for separate boards for special disputes. The results have been fairly satisfactory in those few states which have undertaken the work with the intention of escaping the losses of industrial warfare.

Wright, 287–292.

Adams and Sumner, *Labor Problems*, 295–301, 325–331.

National Industrial Commission, *Final Report*, XIX, 833–862.

When a strike is of the nature of a conspiracy for the restraint of trade, the government is always prompt to interfere. If interstate trade or the conveyance of the mails is threatened, the President never hesitates to use military force, as was noticeable in the great railway strikes of 1877 and 1894. Local disorder is usually suppressed by the sheriffs of the counties, with or without the aid of the state governor. The courts may also take part in restoring peace by issuing injunctions against the leaders of the conspiracy, who are thus apprehended and held for trial. As the injunction is a drastic measure liable to abuse, the remedy in this case, as in some other labor problems, may be worse than the disease.

Conspiracies and injunctions.

Stimson, *Labor in Relation to Law*, 78–93, 118–128.

A. A. A., 36 (1910), 89–141.

623. **Conservation of Labor.** — Although our governments have done little yet to prevent the losses due to unnecessary friction, accidents, death and sickness, the laws and court decisions of recent years recognize the desirability of protecting society, even more than the individual worker, by drastic regulations for women and children who are engaged in industry. Limitation of the hours for women was upheld by the Supreme Court of the United States (1908) in the

Legislation for social welfare.

Greeley, L. M., in *Survey*, 24 (1910), 773–780.

case of *Muller* vs. *Oregon* on the broadest possible grounds, namely, that long hours, by injuring a woman's health, were a menace to the welfare of the race. Very few states, however, have enacted any laws that protect adequately women workers, although many suggested reforms will become law, undoubtedly, within the next decade.

Child labor legislation.

Adams and Sumner, *Labor Problems* 29–37.

Bliss (ed.), *New Encyc. of Social Reform*, 170–181.

The opening years of the twentieth century have been marked by great interest in child labor and by considerable progress in improving the condition of the working child. While more than two million children under sixteen are employed in the United States, the number in dangerous or objectionable occupations, or at work anywhere under fourteen, is much smaller. Most of the states now demand age certificates of all child workers, possibly in the form of birth certificates, refusing employment to those under fourteen during school months. Compulsory educational laws are enforced in connection with labor laws in a few states. The difficulties of enforcing child-labor laws are increased by the ignorance and greed of parents, by the unscrupulousness of employers, by the low wages and uncertain employment which prevent many fathers from earning a living wage from which to provide necessaries for the members of their families. While our governments cannot control the rate of wage received by the less capable adult workers, nor interfere with the management of operations purely economic, they can and must protect the supply of labor from unnecessarily oppressive or destructive forces which threaten ruin. They must check the development of economic conditions that make or keep strong, healthy, and intelligent workers in a condition of semi-servitude. They must protect children from the grind of toil that prevents their proper physical development and forces them to work under unsanitary or undesirable conditions which place a premium on immorality. This they must do, not for the child alone, as a citizen and a future worker, but for his children and for the Republic, which will be the chief loser through his degradation.

QUESTIONS AND REFERENCES

The Tariff (§§ 605–610)

1. On general principles, is it wiser to decrease or increase the rate of protective duties after the protected industry passes the "infant" stage? Situated as we are, would it be advisable to remove the duty altogether? If so, under what conditions?

2. Is there any essential difference in the operation of the protective tariff and the tariff for revenue only as indirect taxes? Which one makes the poor man pay the larger portion of the tax? Explain why this is so.

3. In your opinion, which has been our most successful tariff, and for what reason?

i. What was the amount of our foreign commerce last year? Were the imports or exports larger? What percentage of the imports was admitted free? Of the articles admitted free, which represented the greatest value? Of those paying duty, what were assessed at the highest rate, and what was the rate?

Control of Domestic Commerce (§§ 611–614)

a. On European methods of dealing with the railway problem, look up Hadley, *Railroad Transportation*, 146–258; Hendrick, *Railway Control by Commissions*, 8–91; Johnson, *Am. Railway Transportation*, 322–348; and Meyer, *Government Regulation of Railway Rates*, 1–200.

1. Compare the method of control in England with that of the United States. In what respect have the English railways more freedom in forming combinations than in the United States? What has been their experience in fixing maximum rates?

2. How does our federal system of government complicate the railway problem? Will coöperation between the state and national commissions be necessary for the best results? How may that be brought about?

3. Should our commissions have more or less power? If it is inadvisable to both prevent pools and prohibit discrimination, which would it be best to attempt and which leave alone?

4. Compare fully the original Interstate Commerce Commission with the present commission, in regard to definition of term "common career," control over rates, methods used and success attained.

i. Who are the members of the Interstate Commerce Commission at present? If you have a state commission, learn how many compose it, how they are chosen, and for what term.

ii. Does your commission belong to those with or without power to fix a maximum rate? If with power, how much does it really possess? What has been its success in remedying the evils of railway mismanagement? Of exorbitant rates?

Regulation of Industry (§§ 615–618)

a. Different views of the best method of controlling trusts are given by J. W. Jenks, in *Quar. Jol. Econ.*, XII (1898), 461 *et seq.;* J. D. Sayers, in *N. A. R.*, 169 (1899), 210 *et seq.;* R. Kleberg, in *Arena*, XXI (1899), *et seq.;* J. D. Forrest, in *Amer. Jol. Soc.*, V (1899), 228 *et seq.;* Clark, *Control of Trusts*, and *Problem of Monopoly*.

1. Should there not be some national regulation of corporations doing business in more than one state? What methods have been suggested for control of these corporations? (Jenks, *Trusts*, Appendix.)

2. Is it advisable to have very little or a great deal of restraint upon industry? What might be stated as the minimum requirements regarding capital stock, liability of directors, reports, etc.?

3. Why do not trusts raise the price of their goods indefinitely if they have practically no competition?

i. Look up your general corporation law, the laws regarding banks, railways, and insurance companies. What means of regulation are prescribed? If you have an anti-trust law, notice the definition of a trust and the method of control.

Labor Legislation (§§ 618–623)

a. On employers' liability in the United States compare Seager, *Social Insurance*, 24–83; New York Employers' Liability Commission, *First Report*, 5–69; Bureau of Labor (national), *Bulletins*, No. 31, 1157–1210; No. 74, 1–120; Hard, *Injured in the Course of Duty;* Eastman, *Work Accidents and the Law*.

b. On child labor look up Markham, E., in *Cosmopolitan*, 41 (1906), 480–487, 567–574; 42 (1907), 20–28, 327–333, 391–397, 667–673; 43 (1907), 310–314; *A. A. A.*, May 1905, March 1906, Jan. 1907, Sup. July 1908, Sup. March 1909, Sup. March 1910; Scott, *Child Labor*, "Summary of Laws in Force," 1910.

1. Trace the history of legislation in favor of labor during this century. Can it be said that it is directly due to democracy?

2. Are any of the labor laws of to-day a menace to the liberty of the employer? If so, which? In what way are they dangerous to him?

3. What has been done in this country in the last quarter century to prevent work-accidents? Compare the success of our laws with that of European countries. How can we protect workmen to reduce the loss of life?

4. Compare employers' liability in the United States with industrial compensation in Europe. Are there any legal objections to the adoption of compensation by the states? Name practical or administrative objections to the adoption of the German system; the English system.

5. What may be accomplished by the strict enforcement of a national child-labor law prohibiting the transportation of child-made goods from one state to another?

6. What is the difference between industrial conciliation and industrial arbitration? State advantages of conciliation over arbitration; of voluntary arbitration over compulsory arbitration.

i. Have you a labor bureau? If so, what are its duties? What has it accomplished?

ii. State briefly the law of your state regarding hours of labor, mechanics' liens, protection of health of employees, employers' liability, child labor, and industrial arbitration.

iii. Compare the number of children employed now and a quarter century ago. In what occupations are most of the younger employees engaged in this state? In what states and in what employments are most of the child workers found?

CHAPTER XXVIII

FOREIGN AFFAIRS AND COLONIES

General References

Davis, "Treaties of the United States," in Lalor, III, 944–949.

Hart, *Foundations of American Foreign Policy.*

Moore, *American Diplomacy, its Spirit and Achievements.*

Schuyler, *American Diplomacy*, "and the furtherance of commerce."

Snow, *American Diplomacy*, "treaties and topics."

Latané, *Diplomatic Relations of the United States and Spanish America.*

Henderson, *American Diplomatic Questions.* 2 volumes.

Foster, *A Century of American Diplomacy* (1776–1876). The best connected narrative.

Foster, *American Diplomacy in the Orient.* Events of recent years.

Foster, *The Practice of Diplomacy.* Rules and procedure of diplomatic intercourse.

Treaties and Conventions between the United States and Other Powers (1776–1889). A government publication giving text of all treaties made between those dates.

Compilation of Treaties in Force (1904).

Callahan, *American Relations in the Pacific and the Far East* (1784–1900).

Coolidge, *United States as a World Power.* Relations with different nations.

Moore, *A Digest of International Law.* 8 volumes. Invaluable for reference.

Moore, *Arbitration to which the United States has been a Party.* 6 volumes. A very complete publication under government auspices.

Periodical indexes under United States, Foreign Relations; Monroe Doctrine, Diplomacy, Colonies, Philippines, Territories, etc.

Past isolation.

Probable future complications.

624. **Increased Importance of Foreign Affairs.** — On only a few occasions, three of which we have considered (§§ 156, 169, 226), have any events connected with foreign affairs acted as important influences upon the development of nationality and democracy in America, but a few of our

diplomatic victories would deserve consideration in themselves were they unconnected in any way with our internal growth. In the past our relations with Great Britain have been of especial significance, so that our negotiations with that country occupy a very prominent place in our diplomatic history. This is shown in the negotiations of 1782–1783, and in the diplomacy of the War for the Union, which are considered below. It is observable in connection with the important effect upon our foreign relations of Jay's treaty (1794) which was considered a failure in this country at that time, and in the negotiation of questions affecting British North America and ourselves, especially the Alaskan boundary and fisheries questions, finally settled by arbitration. Our relations with our Southern neighbors have likewise been very important, particularly in connection with that policy familiarly known as the Monroe Doctrine. In the future, foreign affairs must become a much more real part of us than they have been, not alone because the increase of our commerce and improved means of communication have brought us into touch with other world powers, but on account of the newly acquired possessions for whose sake we are necessarily interested in all the problems of the Pacific and the Far East. We shall consider the negotiations with Great Britain in connection with our two important wars, and the development of the Monroe Doctrine, as types of American methods and successes.

Olney, R., in *At. Mo.*, LXXXI (1898), 577–588.

625. **The Treaty of 1783.** — Our national career opened with what may well be considered our greatest diplomatic victory, gained in the negotiations with Great Britain in 1782 and 1783. After Cornwallis's surrender at Yorktown had practically closed the Revolutionary War, Great Britain felt it necessary to make peace with the four nations — the United States, France, Spain, and Holland — with which she was at war. She found the American commissioners — of whom Franklin, Jay, and John Adams took active part in the negotiations — had been instructed to ask for independence, for the Mississippi River as a western boundary,

American claims and successes.

Ashley, *Am. Hist.*, §§ 169–171.

McLaughlin, *Confederation and Constitution*, 18–34.

including the right of navigation on that river, with the St. Lawrence and the Great Lakes on the north, and to demand the right of taking fish off Newfoundland. These claims were deemed extravagant by England, while two of the three, those referring to the western boundary and the fisheries, were opposed by the French ministry, whose advice Congress had told her representatives to follow. As our commissioners were by no means ready to sacrifice American interests to French ambition, even at the request of Congress, without consulting our French allies they devoted themselves to securing from England recognition of the justice of our claims. In a preliminary treaty of peace signed in 1782 they obtained almost everything for which they had asked, giving very little in return. This preliminary treaty was later accepted by England as the final treaty of peace, and we were thus given a perfect title to a broad domain to which through equal good fortune other territories were later added, until it reached from sea to sea, the most magnificent empire in the world.

Prevention of European aid to Confederacy.

Foster, *Century of Am. Diplomacy*, 357–400.

Rhodes, *United States*, 1850–1877), III, 502–543, IV, 85–92, 337–394.

626. The Diplomacy of the War for the Union. — During the great conflict between the North and the South from 1861 to 1865, it was of the utmost importance to the Union that cordial relations be continued with Europe, and that the powers be prevented, if possible, from recognizing the independence of the South. We were fortunate in having at that crisis such men as Seward for Secretary of State and Charles Francis Adams as Minister to England. At the very beginning of the war a rupture was almost caused by the action of Captain Wilkes of the *San Jacinto* in stopping the British mail steamer *Trent* in order to seize two Confederate commissioners on their way to Europe. They were almost immediately given up on request, with a polite but sarcastic statement that we rejoiced to see that England now disapproved the right of search and accepted the principle for which we had so long contended. Later our representatives were kept busy preventing, so far as lay in their power, the equipment of Confederate privateers in English and French

shipyards, and in counteracting the influences that were constantly brought to bear in favor of recognizing Southern independence. The great victories of Vicksburg and Gettysburg (1863), coupled with a stout adherence of the English working-people to the cause of freedom that the North represented, lessened these dangers, though American success was due in great part to the services of Adams and Dayton at the English and French courts.

Treaty of Washington and Geneva award.

Foster, 421–428.

Rhodes, VI, 359–376.

In the treaty of Washington (1871), besides many other questions that were settled, arrangements were made that the amount of the damages due the United States from Great Britain for injury done to our commerce by the *Alabama* and other vessels fitted out in British yards during the war should be fixed by a tribunal of five members, — one American, one English, and three from other nations, — the treaty itself laying down regulations which defined the duties of neutrals in time of war. The tribunal met at Geneva, Switzerland, and placed the award at $15,500,000.

Original Monroe Doctrine.

627. Some Early Applications of the Monroe Doctrine. — The circumstances which led to the now famous declaration of President Monroe upon the relation of the United States to European interference with other American countries were briefly set forth in § 169, and need not be repeated. What was intended to be a statement of a temporary policy has become a settled doctrine of governmental action, applied many times since 1823.

Application in Central America.

Curtis, *U. S. and Foreign Powers*, 95–99.

It was the threatened conquest by Great Britain of the district around the mouth of the San Juan River in Central America, over half a century ago, that brought out one of the first protests under the Doctrine. As the subject of an interoceanic canal was at that time very interesting to both nations, and as the capital for such an enterprise could not be obtained in America, but must be procured in Great Britain, the United States was satisfied to make the Clayton-Bulwer treaty (1850), which prohibited either country from gaining control of the territory about the canal, or getting exclusive control of the canal itself. The subsequent atti-

tude of the United States toward this treaty is too well known to require comment.

The French in Mexico.

Foster, *ibid.*, 401–403.

Lothrop, *Seward*, 387–395.

The most conspicuous application of the Doctrine was in connection with the affairs of Mexico in 1866. During the Civil War, Napoleon III of France, under pretext of collecting certain debts, forced upon the Mexicans an Austrian prince named Maximilian, who was maintained as Emperor of Mexico by the use of the French army. Our government protested mildly, and after Appomattox an army of observation under Sheridan was despatched to the Rio Grande, and disapproval of French actions clearly expressed. Finally, on December 10, 1865, Secretary Seward sent to France a peremptory note, stating that the policy of friendship for France would be brought into immediate jeopardy, unless her intervention were brought to an end. After a little hesitation Napoleon agreed to withdraw his troops; and when that was done, the Mexican Empire came to an end, Maximilian being put to death.

Applications from 1866 to 1895.

628. **The Monroe Doctrine in Recent History.** — There has been a pronounced tendency throughout the country during the last two or three decades to enlarge upon the original Monroe Doctrine. It was observable in connection with the proposed construction of the Panama Canal under foreign control. The Doctrine was made the basis for official statements that even such remote islands as those in the Hawaiian group, forming at that time an independent monarchy, could not be permitted to pass into the possession of a European power. Far more noteworthy than this was the new form assumed by the Doctrine at the hands of President Cleveland and Secretary Olney (1895) in the Venezuela boundary dispute. The location of the line between that country and British Guiana had never been definitely settled, although numerous surveys had been made. It seemed to our government that Great Britain was endeavoring to seize upon so much of the Venezuela territory as might enable it to gain the mouth of the great Orinoco River. Secretary Olney therefore called the atten-

The Venezuela dispute.

Foster, 466–478.

Latané, *U. S. and Spanish America*, 273–284.

tion of Great Britain to the interests of the United States which were involved in the question, and showed how the Monroe Doctrine applied to the case. When Lord Salisbury refused to accept Olney's statement of the controversy as being true to the facts, and denied that the Doctrine applied, President Cleveland sent Congress a message in which he not only fully supported Olney's contentions, but maintained that the United States should interfere to determine where the boundary line really ran. For that purpose he suggested a commission to be selected by the President. The commission was duly appointed, but before it was ready to report, Great Britain agreed to leave the whole matter to an impartial board of arbitration.

Dewey, *National Problems*, 304–352.

The present Monroe Doctrine includes not only the old idea that no American territory shall be taken by a European power for its own use, but the newer one that territorial controversies shall not be decided forcibly to the advantage of the stronger country. Territory shall not be seized or retained to guarantee the payment of debt, but we do not object to the use of force in the collection of debts. Many persons advocate the upholding of the interpretation of the Doctrine held by a recent President and Secretary of State, namely, that the United States is the guardian of all Latin-American interests and must protect those interests against foreign aggressions and domestic dangers. The chief objectors to this policy are those Latin-American Republics that oppose the patronizing attitude of the United States.

Present Monroe Doctrine.

Latané, *U. S as a World Power*, 255–284.

629. The United States as a World Power. — The position of the United States as a world power has long been suggested by her preëminence in the Western Hemisphere. It has become more conspicuous with the changes in foreign relations during the last two decades, not only in more clearly defining our headship among the republics of the New World, but in the acquisition of scattered colonial possessions, in new and important activities in the Far East, and in participation with other great powers in affairs of world-wide significance. More than all else it has been shown by our

General position.

Calhoun, *Greater America*, 147–170.

Reinsch, *World Politics*, 309–362.

commercial and diplomatic position as a power second to no other.

The United States in the Pacific.

Latané, *U. S. as a World Power*, 100–119.

Our place as a world power has come naturally and inevitably, as the Pacific Ocean has become more and more the sphere of world action, because we are the only great nation touching both the Atlantic and the Pacific. It was observable in our acceptance of a joint protectorate over Samoa in 1889, in our acquisition of Hawaii and the Philippines in 1898, and in our joint action with other great powers in the movement on Peking during the Boxer revolt in 1900. Usually our policy has been marked by moderation so far as our own demands are concerned, and by a disinterested, but sincere, determination to protect the territory, revenues, and rights of the non-Caucasian countries that have been unable to withstand the aggressions of the civilized world.

Efforts made to protect neutrals.

Schuyler, *Am. Diplomacy*, 367–398.

Foster, *Century of Am. Diplomacy*, 93, 154–157, 347–349.

630. **American Influence on World Peace.** — From the beginning of its history the United States exerted its influence to secure the rights of neutrals against the aggressions of belligerents. The proclamation of neutrality issued by Washington (1793), with the laws of 1794 and 1818 defining the right of neutrals, furnished not only an example of firm and moderate action under trying circumstances, but a model copied by older nations that wished to declare their neutrality. As early as 1785, a treaty with Prussia contained provisions declaring that in case of war between the two countries, even contraband of war was free from capture if carried on neutral ships, and prohibiting both blockades and privateering. Although the United States used its influence continually to secure the abolition of privateering, it did not agree to the Declaration of Paris (1856) in which privateering was abolished, while blockades and neutral rights were defined; first, because the provisions were too moderate, and, second, because their acceptance by the President would not be binding on Congress.

International arbitration.

The United States has long been an advocate of arbitration as a means of solving international difficulties, having

used that method repeatedly since the adoption of the Constitution, especially in the settlement of disputes with Great Britain. In the recent movement for arbitration, however, the government of the United States acted rather tardily. This was due not to lack of interest in the subject but almost entirely to the complicated machinery, chief executive and Senate, through which foreign affairs are managed. A general arbitration treaty with Great Britain in 1897 was defeated by the Senate's failure to coöperate with the President. When the Hague Peace Conference in 1899 made provision for a permanent court of arbitration, proposing a form of treaty under which disputes should be submitted, the United States found it impossible to join the other nations in this great movement until, in 1908, several treaties were ratified.

Larned(ed.), *Hist. for Ready Ref.*, VI, 577–580, VII, 708–711.

Americans have been very active in the promotion of peace, holding national conferences, seeking to keep peace in the Western Hemisphere, and securing a second Peace Conference at the Hague in 1907. As the only great power with direct access to both the Atlantic and the Pacific, as the most disinterested spectator of European political manœuvres, and of contests in the Orient for territorial, political, or commercial advantage, the United States will undoubtedly have in the future a still greater share in the maintenance of the world's peace.

Peace conferences.

Larned(ed.), *Hist. for Ready Ref.*, VII, 715–725.

631. Our Experience with Colonies.—The growth of the United States from an Atlantic state to one with numerous possessions in the Pacific brought serious territorial problems. The territory which was acquired before 1867 consisted of great areas practically uninhabited and lying directly west of the states, in the path of advancing migration from the older sections of the country. For different districts of this vast region it was customary for Congress to establish two classes of territorial government (the temporary and the permanent) adapted to the different stages in their development. The government of each district was considered temporary until the population warranted the organization

Two classes of colonies.

Boyd, in *At. Mo.*, LXXXII (1898), 735–742.

Hart, in *Harper's*, XCVIII (1899), 319–328.

of a regular government. Temporary governments were principally distinguished from permanent governments by a total lack of self-government, for the organized territories were always permitted to choose one or both houses of the legislature, the governor and the judiciary, however, being appointed by the President.

Semicolonial character of organized territories.

In section 311 we considered the amount of self-government permitted in the organized territory of the present day, and noted how prominent a place the government at Washington occupied in the control of such a territory. That account may be taken as showing how organized territories have been governed in the past as well as within recent times, although there has been more local autonomy in the lands under national supervision in recent years than formerly. But even in these organized territories more control is exercised from Washington now than was exercised from London over Connecticut and Rhode Island before the Revolutionary War; that is, our territorial system has always involved certain semicolonial relations.

Colonial character of unorganized territories.

During the period of "temporary" government, moreover, the relation between the territory and the nation was a colonial one, pure and simple. In the lands ceded by the states under the Confederation, the districts were at first under the charge of a governor and judges selected by the President. The temporary government of the Louisiana Purchase was of the nature of a military despotism, while from 1805 to 1816 the people in that portion north of the 33d parallel were allowed less share in the election of public officials than those of Massachusetts in colonial times.

Alaska. Willoughby, *Territories and Dependencies*, 74–78.

For Alaska there has never been any attempt to establish a regular government, not even a governor being appointed until 1884. This official has no regular corps of assistants, and although there have been judges for some time, there is even yet no legislature.

Conditions affecting the character of new colonial governments.

632. **Our Colonial Governments.** — The policy pursued toward the territories acquired in 1898 differs from that we have used in regard to the land lying between the Mississippi

and the Pacific, because the population of these new possessions is comparatively dense, and is lacking in the political training of English-speaking peoples. It was necessary, however, as in the case of our early acquisitions, to arrange temporary governments for which our regular territorial system did not furnish any suitable models.

Ashley, *Am. Gov't*, rev. ed., §§ 268–270.

Moses, *Gov't of U. S.*, 271–280.

Since 1907 the Philippine Islands have enjoyed a representative assembly of 80 members elected by Filipino voters that coöperates with the Commission of seven Americans and Filipinos in making the laws. There are local governments largely controlled by those Filipinos who are educated or own property. Great progress has been made in establishing schools and making other improvements. Porto Rico has a much more liberal suffrage law, although in form the government resembles that of the Philippines.

Government of Philippine Islands and Porto Rico.

Willoughby, *Territories and Dependencies*, 80–107, 191–214.

The principal difficulties to be overcome in securing that kind of colonial government which best protects the interests of our nation and the subject peoples, in establishing a system of internal taxation that proves most profitable and least burdensome, and in properly administering such a body of law as each colony may need, are not constitutional but practical. Emphasis has rightly been placed upon the importance of the national bureau which takes charge of colonial affairs and the need of securing an honest and competent civil service, in order that the plans for governing the colonies may not fail through faulty administration, but be made the more efficient; yet these are only two of the necessities of the situation, for success cannot be obtained through good service under suitable supervision if the method of dealing with social, political, and fiscal problems is wrong. We require all of the help that can be obtained from our own experience, and the more extended experiments of European nations, but are, of course, compelled to work out the problems of control according to the conditions that we find in each colony.

Problems of colonial government.

QUESTIONS AND REFERENCES

Some Chapters of American Diplomacy (§§ 624–630)

a. The treaty of 1783 is considered in Fiske, *Critical Period*, 1–49; Foster, *Century of American Diplomacy*, 40–72; Pellew, *Life of John Jay*, 114–228; Jay, J., in Winsor's *Narrative and Critical History of America*, VII, 89–114; Bigelow's *Franklin*, Pt. III, Chaps. III–V.

b. On the diplomacy of the Civil War see J. Schouler, in *N.A.R.*, CII, 446 *et seq.*; Aldis, in *N.A.R.*, CXXIX, 342 *et seq.*; Woolsey, in *N.A.R.*, CXI, 257 *et seq.*; Adams, *Charles Francis Adams*; Lathrop, *W. H. Seward*, 292–387; Hosmer, *Outcome of Civil War, Appeal to Arms*; Rhodes, *History of the United States*, 1850–1877, III, 502–543, IV, 337–394.

c. On the French occupation of Mexico consult Latané, *United States and Spanish America*, Chap. V; F. Bancroft, in *P.S.Q.*, XI (1896), 30–43; Stevenson, *With Maximilian in Mexico*.

1. What conditions especially affected American diplomatic success in 1783? Would it have been better had the American commissioners sacrificed some of their claims and made a commercial treaty? Give the history of our struggle for commercial rights and privileges before 1800.

2. Why does the Monroe Doctrine represent a wise national policy? What are the dangers from a too extensive application of it? How does the new Monroe Doctrine differ from that advocated a half century ago? What is its status at present?

3. What have been our greatest diplomatic mistakes? our greatest successes? What is the prospect that "to conduct foreign affairs with skill we must sacrifice to some extent the democratic idea of government by the people and the federal idea of division of power" (§ 254)?

The Government of Colonies (§§ 631–632)

a. On colonial government and problems compare Becker, C., in *P.S.Q.*, XVI (1900), 404–420; Burgess, J. W., in *P.S.Q.*, XV (1900), 381–398; Bryce, J., in *Harper's*, XCVII (1898), 609 *et seq.*; Worcester, D. C., in *Century*, LVI (1898), 873–879.

1. Is there any likelihood that any of our newer possessions may be admitted to the Union as states? Give objections to keeping Hawaii permanently in a colonial relation; to making it a state.

2. What grades of colonial government has Great Britain? How are her colonial officials trained? Tell something about the organization of the British colonial office.

3. Will we take more or less part in the affairs of the East than we have? Should it be our policy to acquire other possessions bordering on the Pacific? What will be the probable effect of permanent colonialism upon our national government? upon the future of democracy?

i. Describe the present government of Hawaii; of Porto Rico; of the Philippines. Give the suffrage requirements of each. Who is at the head of each government? What rights of local self-government are accorded to each?

CHAPTER XXIX

NATURAL RESOURCES

General References

National Conservation Commission, *Bulletin* 4. Summary of investigations.

Beard, *American Government and Politics*, 401–416. Summary of activities of the national government.

Coman, *Industrial History of the United States*, 375–413. Summary from economic point of view.

Chautauquan. June, 1909. Special Conservation number.

Larned (ed.), *History for Ready Reference*, VII, 145–153.

Nearing and Watson, *Economics*, 60–106. Summary from economic points of view.

Hart, *Practical Essays on American Government*, No. X. History of the land laws.

Sato, S., in J. H. U. S., IV, Nos. 7–9. Land policy of the United States.

Donaldson, *The Public Domain* (1883). A government report on the history and administration of the land laws.

Public Lands Commission, *Report*, 1905. Summary and criticism of land laws.

Reinsch (ed.), *Readings on American Federal Government*, 538–609. State papers and congressional debates, esp. on forestry.

Pinchot, *The Fight for Conservation*. Needs and aims of conservation movement.

Matthews, *The Conservation of Water*.

Van Hise, *Conservation of Natural Resources*. The only connected and complete account of the subject written by one person.

Annals of American Academy, January, 1908, inland waterways; May, 1909, water, forests, and land.

Inland Waterways Commission, *Preliminary Report* (1908).

Commissioner of Corporations, *Report on Transportation by Water* (1909–10). 3 vols.

Conference of Governors, *Proceedings* (1908). Discussions of conservation.

National Conservation Commission, *Report*, 1909. 3 vols. A very full account of resources, wastes, and preventive measures. Secretaries' reports and contributed papers.

The resources as a public asset.

Nat. Conservation Com., *Report* (1909), I, 13–26, 84–93.

633. **General.** — The spirit of opposition to government supervision or paternalism, which marked so strongly the early history of our republic, unfortunately interfered with the preservation, for the use and benefit of the whole people, of the unparalleled natural resources possessed by the United States. With the finest river system in the world, reaching every portion of the large, fertile Mississippi Basin; with numerous rivers on every coast, navigable for a distance inland; with highly valuable water power at the "fall line" and at the mountain slopes; with one-third of the area of the continental United States covered with valuable timber; with exceedingly rich mineral deposits, especially of those most valuable to life, industry, and commerce, — coal and iron, — the United States seemed to possess inexhaustible resources. Originally public property, owned or controlled by the people through the governments of the nation or the states, these public possessions have been distributed with lavish hand, without thought of the heritage that should have been kept for future generations, and without fear, except that the government of a democracy should develop a paternalism without rival, in its possibilities, in the history of nations.

Awakening to dangers.

Van Hise, *Conservation of Natural Resources*, 359–364.

Howe, *Privilege and Democracy*, 28–57.

634. **Beginning of the Conservation Movement.** — During closing years of the nineteenth century a few far-sighted men were aroused by the danger that all of the public property would come under private ownership. They began to realize the great wastes that occurred from the unnecessary destruction, or from the non-use and from the misuse, of valuable and frequently non-renewable resources under public or private ownership. They perceived the menace of great monopolies which controlled our most valuable resources.[1] They

[1] Many resources have already been monopolized. It is estimated that at least three-fourths of the valuable deposits of iron ore are controlled by the United States Steel Corporation. Most of the copper ore belongs to

Cronan, *Our Wasteful Nation*, 107–134.

noted the losses incident to the waste and extravagance which mark not only our public policy, but individual and corporate methods, in agriculture, in mining, in transportation, and in all other phases of American life. Gradually, under the leadership of Gifford Pinchot and Theodore Roosevelt, there was developed a national policy for the preservation of many resources still owned by the nation. Under the guidance of these men and others, interest was aroused in public lands, in forestry, in the improvement of waterways, and finally in the conservation by our governments, national and state, of resources of every kind.

Important conservation gatherings. Van Hise, *Conservation*, 2–14. *Chautauquan*, 55 (1909), 25–104.

Interest was aroused first in forestry, then in waterways. In 1908 the first Conference of Governors was held to consider the preservation of all natural resources. The next year a national conservation commission made a report that is the authority on the subject of conservation. Forty-two state commissions, some of which have been made permanent, were created as a result of the conference of governors.

State *vs.* national authority.

635. **The Law and the Problem.** — The problem of conservation, like many that have been considered in previous chapters, is complicated by the division of authority between the state and national governments. There has been some rivalry between nation and state to determine the exact rights and limits of authority to be exercised by each. This rivalry may succeed in arousing even greater interest in conservation, through the desire of each governmental agency to be foremost in the work.

Private and public rights.

The problem of conservation is also complicated by the fact that most of the resources, having already been surrendered by the governments, are controlled or owned by private parties, whose rights are very carefully protected by

a few companies. The anthracite coal beds in the states are owned by a few railway corporations. Attempts have been made to monopolize valuable coal deposits on the public lands. Practically all of the best dockage sites in our city harbors or river fronts are controlled by railways. About one-third of the developed water powers belong to a few companies which are supposed to be connected, and their agents have tried to secure possession of many, even more valuable, on the public domain.

law. The Fourteenth Amendment to the national Constitution,[1] supplemented by numerous national and state laws, is supposed to safeguard rights to private property which can be taken for public use only by the exercise of the right of eminent domain. Recent decisions of the courts, however, indicate a tendency to place public rights above any private right. The United States Supreme Court in recent cases[2] holds that "the state as *quasi*-sovereign and representative of the interests of the public, has a standing in court to protect the atmosphere, the water, and the forests within its territory irrespective of the assent or dissent of the private owners immediately concerned."

A. A. A., 33 (1909), 497–517.

The problem is aggravated further by the fear that the conserving of resources may retard our economic development, and by the desire of corporations or selfish individuals to obtain advantages, as in the past, at small cost. Before taking up the subject of conservation of the resources now under public control, let us consider the policy of the national government in the past.

Business opposition to conservation.

636. Creation of the Public Domain. — When the states of the original Union, at the close of the Revolutionary War, ceded to Congress their interest and rights in lands in the West (§ 100), there was created a national public domain which grew to immense proportions with later acquisitions of territory. As practically none of the lands in the new territories, except in the case of Florida, Texas, Hawaii, and the Spanish islands, was owned by private parties, this gave Congress control of an area estimated at 2,825,000 square miles, a total area equal to that of the present states, excluding California. This land included almost all of the Mississippi Basin, with its rich agricultural lands and large coal fields; the Cordilleran range and plateau, with valuable deposits of minerals; and desirable lands on the Pacific slope, including more than three hundred million acres of mineral, forest, and other lands in Alaska.

Area and character of public lands.

Willoughby, *Territories and Dependencies*, 27–52.

Donaldson, *Public Domain*, 59–145.

The original lands of the public domain had been ceded by the

[1] The Dartmouth College Case (1819) has protected corporations that hold charter rights from interference and sometimes from regulation by our governments.

[2] *Hudson County Water Co.* vs. *McCarter*. The same principle was emphasized in *Ga.* vs. *Tenn. Copper Co.*

Policy of the eighteenth century.

states to prevent friction between the states then in the Union and to furnish Congress with means for revenue. Provisions were made in 1785, and completed in 1796, for surveys of the lands into townships six miles square, each of which contained 36 sections of 640 acres each. Before 1800 these lands were sold in large blocks, usually to land companies.

Donaldson, *Pub. Domain*, 196–201.

Sales before 1840.

Callender (ed.), *Econ. Hist. of the U. S.* (1765–1860), 666–686.

Sanford, *Railroad Land Grants*, 7 18.

637. Sale of Agricultural Lands in the Nineteenth Century. — In 1800 the law was changed to permit the sale of 640 acres to any person at a price of $2 an acre, payable in installments. Even at this low figure the national government was obliged to meet the competition of those states, especially Massachusetts, Connecticut, Virginia, and North Carolina, which had unoccupied lands of their own that were offered at less than $1 per acre. The amount sold by the national government during this period (1800–1820) was smaller than the present state of West Virginia, although the migration to the West had been extensive after 1815 (§ 165). After 1820, the national government permitted the sale of blocks as small as 80 acres, at a cash price of not less than $1.25 an acre. Some preference was given even before that time to actual settlers, but most of the lands that were sold between 1830 and 1840 went to speculators who bought recklessly during the land "boom" of 1835 and 1836, an area being sold the latter year twice as large as that which had been taken during the first twenty years of the nineteenth century.

Preëmption and homestead laws.

Coman, *Industrial Hist.*, 294–297, 303.

Sanford, *Railroad Land Grants*, 44–49, 56–60.

Donaldson, *Pub. Domain*, 214–216, 332–356.

The speculation preceding the panic of 1837 having convinced the law-makers that precedence must be given to settlers, in order to protect the government as well as to aid in the development of the West, in 1841 a general preëmption act was passed which applied to all public lands. This permitted settlers, citizens or prospective citizens who were heads of families, to occupy 80 or 160 acres of public lands before the lands were opened to entry, giving them full title if they proved a residence of at least six months and paid $1.25 to the government when the lands were offered at regular sale. This preëmption law was repealed in 1891. It had been on the statute books but a short time when agitation began for a homestead law, which should grant lands to actual settlers at even lower figures. The Free Soil party in 1852 advocated such a law, and in 1860 a homestead bill providing for five years' residence and a payment of 25 cents per acre was vetoed by President Buchanan. In 1862, a law was passed which has remained in force with some modifications to the present (§ 637).

General.

638. Grants of Public Lands (Historical). — Not only has the national government been exceedingly liberal to settlers and others to whom lands have been sold or distributed, but it has made large grants of land for school purposes or public improvements.

School lands.

Donaldson, *Pub. Domain*, 223–231.

To each state admitted before 1848 one section in each township was set aside for the public schools, to be sold, rented, or reserved, as the state decided. To all states admitted since 1848 at least two sections in each township have been granted. Two or more townships have also been given for state universities. For agricultural schools there was set aside in 1862 for all states then in the United States, 30,000 acres for each representative of the state in Congress. Later states have received similar amounts on admission to the Union. Many of the states disposed of their school lands recklessly, expending the money without great delay. Others have sold them more slowly. A few created large funds the interest of which now reduces the taxes necessary for the support of the schools. The impetus given to the cause of education by those grants was noteworthy in most of the states.

Land for public improvements.

Hart, *Prac. Essays on Gov't*, 247–249.

Donaldson, *Pub. Domain*, 257–268.

Sanford, *Railroad Land Grants*.

When the national road was constructed from Cumberland in Maryland across the Ohio River more than a century ago, three per cent of the proceeds from the sales of the public lands in Ohio, and later in Indiana and Illinois, was set aside, ostensibly for the extension and improvement of that famous highway. Many other states have received lands for roads. Soon after the Erie Canal was opened by the state of New York in 1825, lands were granted to Indiana, Ohio, and Illinois as bounties for the construction of canals. Between 1850 and 1872, important grants were made to many of the western states for railways within their borders. These usually included alternate sections for several miles on each side of the proposed roadbed. In the case of the Union Pacific (1862) and later transcontinental lines, similar grants for ten miles or more on each side of the railway were given to the railway corporations directly. These bounties proved a great inducement to the construction of railways on the prairies and across the mountains to the Pacific. The lands were sold at low figures to settlers who helped to build up the railway's business, although some of those that contained valuable mineral deposits were secured by interested parties. Lands that were in strips on which no roads were built reverted to the national government. As in the case of most artificial stimuli, the immediate gains were more than counterbalanced by the ultimate losses, especially where these bounty grants enriched a few persons rather than aided the settlement of the territory traversed by the line. It is estimated, in the case of at least one transcontinental railway, that the value of the land subsidy was much greater than the total cost of the entire railway system.

Original Homestead Act.

639. Homestead Law. — The desire of the national government to develop and settle the West was carried into effect not only through the sale of public lands and the

Van Hise, *Conservation*, 282–287.

grants to schools and railways, but by the Homestead Act, originally passed in 1862. At present this law permits any citizen or person who intends to become a citizen (being the head of a family) to acquire for a nominal fee, as a homestead, a quarter section, 160 acres of any unoccupied government lands not classed as irrigated or mineral. The homesteader must live on the land five years to perfect title, unless he pays the minimum price of $1.25 an acre, after a nominal residence of fourteen months. Veterans are allowed to deduct the time of military service after the required residence of fourteen months.

Operation of Homestead Act and others.

Van Hise, *Conservation*, 287–297.

Humphrey, S. K., in *At. Mo.*, 102 (1908), 1–9.

Nelson, K., in *A. A. A.*, 33 (1909), 611–619.

This law has applied equally to river valleys, prairies, hills, and mountains. Its real object of distributing small farms to actual settlers is most worthy, but it has not always been satisfactory in operation. On the western plains and foothills, 160 acres frequently is too small an amount of land for a farm, while an area of unlimited extent is of little value without water. As no distinction was made between water lands and others, a few homesteaders could monopolize all of the rights to creeks, springs, or water holes. These frequently passed into the hands of wealthy land owners who purchased the lands from the settlers. Frequently on these areas and on others, the so-called settler was only the agent or "dummy" of a powerful corporation. Because of improper classification of public lands, valuable timber or mineral lands were acquired under the homestead act. In operation only eight months of residence was necessary until the government awakened, a few years ago, to the laxity in the administration of the law. In fact, many claims were proved by persons whose "residence" consisted of a few days or nights on the homestead. In the opening up of new tracts, although there are many more applicants than there are lots, only the fortunate few who secure especially valuable quarter sections ever patent their claims. A very great amount of fraud has existed in the issuance of land patents to homesteaders and others who have had influence. Although nearly 120,000,000 acres have been taken up

under the homestead law, a large part of this land passed into the hands of land-speculators and corporations.

New Homestead Act.

640. Western Land Laws. — By a law enacted in 1909, homesteads of 320 acres are permitted on which the patentee shall cultivate the land extensively for five years. The act applies to non-irrigable lands which have not been set aside as either timber or mineral lands.

Desert Land Act.

Nat. Conservation Com., *Report* (1909), III, 422–425.

The Desert Land Act permits any person to acquire, at $1.25 an acre, 320 acres of arid lands that are not easily irrigated, on condition that it shall be reclaimed in part. It has opened the way to very large holdings, some of which have become exceedingly valuable with the development of water supplies. In operation it has exhibited most of the defects with few of the advantages of the homestead laws.

Carey Act (1894).

Nat. Conservation Com., *Report* (1909), II, 78–79, III, 394.

As most of the present public lands are mountainous or arid, the national government arranged in the Carey Act (1894) for the transfer of arid lands to any state that would provide for the irrigation of the land and dispose of it to actual settlers. More than one-half of the states in the West took advantage of the law. Originally a maximum amount of 1,000,000 acres was transferable to any one state, but Idaho and Wyoming showed such interest that their maximum was raised to 2,000,000 acres.

Provisions of the law.

Newell, F. H., in *Outlook*, 83 (1906), 933–941.

Davis, A. P., in *A. A. A.*, 31 (1908), 203–218.

641. National Irrigation Act of 1902. — The culmination of the liberal land legislation of the United States was the enactment (1902), and the application by the national government directly, of a law for the irrigation of lands that cannot be used for agriculture under natural conditions. The government has planned and is now constructing great reservoirs in which the spring floods are saved to be used for irrigation, during the summer and fall, on lands which would otherwise be unproductive. This policy applies to the states or territories in the western part of the country. The scheme is largely self-supporting. A fund is created by the sale of public lands in these states. This money is used to construct dams, the lands irrigated from these reservoirs are sold in small blocks to actual settlers, and the

money is placed in the fund for further expansion of the work. In 1910 Congress authorized $20,000,000 worth of bonds to complete work already begun, as the reclamation fund was very low. The reclamation service of the Interior Department has achieved remarkable results in examining districts that might be made arable, in planning the construction of dams amid great engineering difficulties, perhaps hundreds of miles from the territory provided with water, and in carrying this policy into effect.

Reclamation work planned.

Work has actually been begun on thirty of these projects (1910), and the total cost of work that has been started is more than one hundred millions. It is expected, however, that the increase in value of the lands brought under irrigation will exceed the entire cost of construction by at least 50%. The annual value of the crops of these lands undoubtedly will amount to one-half the original cost of construction.

Newell, F. H., in *Pacific Mo.*, 18 (1907), 471–483.

Advantages of our agricultural land policy in the past.

642. Significance of Agricultural Land Policy. — Nothing has affected more vitally the political development of the United States, as well as the economic progress and the social life of the people, than the disposal of our agricultural lands. During the closing years of the Revolution the public lands in the West produced the chief bond of union among the states (§ 100). In the West the possibility of acquiring title to public lands was a very important factor in the rapid development of the section east of the Mississippi between 1815 and 1860, and west of the Mississippi after the War for the Union. Our public land policy helped to keep us a nation of small farmers. It aided in the development of a real democracy, not simply political (§§ 170, 188), but economic and social. It helped us to absorb as true American citizens multitudes of foreigners who have come to us.

Bullock (ed.), *Reading in Public Finance*, 64–72.

Disadvantages in general.

It was used for the purpose of rapid settlement and immediate economic development, however, rather than for the public welfare of the future United States as well as the America of that day. Defective land laws, the lax administration of the better laws, and the extravagant land

grants to railways in many cases permitted the accumulation of huge estates or fortunes. Just as the establishment of small farms, three-quarters of a century ago, created a West in which political equality was the rule and great distinctions the exception, in later years the land policy developed a class which, through the misapplication or maladministration of these land laws, grew rich and powerful at public expense. In parting with its greatest natural asset, its rich agricultural lands, the United States has made a great blunder, so far as the lands did not become the permanent homes of a numerous and thrifty class of small farmers.

Humphrey, S. K., in *At. Mo.*, 102 (1908), 1–9.

Howe, *Privilege and Democracy*, 28–44.

643. **Government Forest Lands and Reserves.** — Since 1878 it has been possible for any citizen of the United States to secure title to 160 acres of lands that were neither agricultural nor mineral. This act has been used extensively not only by small owners but by most of the large timber companies, which have secured valuable concessions through purchase from speculative purchasers or "dummies." In view of the fact that, according to the best estimates, at our present rate of consumption our timbers will be exhausted in less than a half century,[1] it has been most unwise to alienate those lands, valuable not only for the timber but for the conservation of the water supply.

Stone and Timber Act.

Nat. Conservation Com., *Report* (1909), III, 387–392.

The need of protecting our timber lands led in 1891 to the enactment of a national law permitting the reservation of forests. Great areas have been added to this domain, especially under President Roosevelt, the total in 1909 amounting to nearly 170,000,000 acres, aside from reserves in Alaska. These reserves contain about one-fourth of the entire forest acreage of the continental United States. Congressional appropriations were authorized (1911) for the beginnings of Appalachian forest reserves from lands chiefly under private ownership in the mountain regions of Eastern states. The interest in such valuable reserves was one of the

National forest reserves.

Pinchot, G., in *A. A. A.*, 31 (1908), 219–227.

[1] Some kinds of woods, *e.g.* those used in the manufacture of wood-pulp, will probably be exhausted within a few years.

chief causes leading to the first conference of governors in Washington (1908) (§ 438).

State reserves.

Nat. Conservation Com., *Report* (1909), II, 191.

The states have exhibited less interest in the subject of forest reservation; in the East, chiefly because the forests have long been privately owned; and in the West, because the national reserves are very extensive, including many lands destitute of timber. New York, with a forest "preserve" of more than 1,500,000 acres, and Pennsylvania, with reserves more than half as large, have set aside the largest areas, principally in the mountain districts. Louisiana, Maine, Wisconsin, Minnesota, and California have also devoted considerable attention to the subject of forest conservation.

The states as well as the nation have also created numerous parks, such as Yellowstone, Glacier, Yosemite, and Niagara.

Slow development of governmental protection.

Nat. Conservation Com., *Report*, II, 371–389.

A. A. A., 33 (1909), 485–517.

644. Forest Policies of our Governments. — Although every effort has been made by our Chief Foresters and others to develop a forestry policy that should befit our advanced position as a progressive nation, the apparent abundance of our timber lands has caused the people to view with complacence the needs of conservation and the dangers of present wastefulness and negligence. In those countries where scientific forestry is most in use, their supply of timber, on forest lands much less extensive than ours, grows more valuable year by year. The forests owned by private parties in the United States — constituting about three-fourths of the forest lands and about four-fifths of our timber supply — are cut without view to utilizing all of the timber, without desire to save the young trees, and without attempt at reforestation. The extension of governmental authority over private owners for the public good must come with the continued losses and dangers due to deforestation.

On our national and state forest reserves[1] the attempt is

[1] As a great deal of land reserved by the United States is timberless, it is leased to cattle or sheep men. Many westerners complain because the reservation of these lands prevents their proper development. (See Knapp, in *N. A. R.*, 191 (1910), 465–481.)

made to protect the trees from lumber thieves by efficient patrol. The dangers of forest fires are minimized by the construction of fire breaks on the ridges of the hills, by stringent regulations for campers, and by constant surveillance. Some timber is cut, less for profit than to permit better growth of the remainder. From the nine national nurseries trees suitable to the soil and climate are transplanted to denuded or barren slopes. Especially near the head-waters of streams is particular attention paid to the preservation of forests and plant-life, which will conserve the waters, forming "sponge-like" reservoirs that prevent the violent spring floods by holding the moisture in the earth. This not only tends to maintain a fairly uniform stream-flow throughout the year, but it saves the erosion of soil, which is of great value to forestry on the slopes, but is a hindrance to agriculture if it is deposited at the foot of the hills, and a menace to navigation if it is allowed to form bars in the rivers.

Objects of governmental protection.

Van Hise, *Conservation*, 235–252.

Nat. Conservation Com., *Report* (1909), III, 725–747.

645. **Water Conservation.** — The double aim of forest reservation is the protection of timber on the public lands and the enclosure of the catchment basins or watersheds of mountain streams. With the forestation of barren areas a much larger amount of the spring flood waters will be kept for the summer months, to be used profitably for water power, for irrigation, and for navigation. This will prevent part of the heavy losses caused by the inundations of storm waters, estimated at more than $200,000,000 a year.

Prevention of floods by reforestation.

Pinchot, G., in *A. A. A.*, 31 (1908), 219–227.

Nat. Conservation Com., *Report* (1909), II, 112–125, 701–710.

A very great loss of valuable waters could be prevented by the construction of dams for storage-reservoirs, if they are properly located. Most of these reservoirs must be placed on lands now owned by private parties, as the rainfall is limited in the areas under governmental reservation, except in the northeastern state reserves and on the north Pacific slope. However, the magnitude of the work, the extensive condemnation proceedings that are required, the variety of interests that would be benefited, the cost of proper conservation, and the postponement, if not the im-

Advantages of reservoir construction.

Nat. Conservation Com., *Report* (1909), II, 108–111, 693–694.

possibility in many cases, of securing pecuniary returns make private enterprise practically impossible. It is essentially a work to be undertaken by the national or state governments.[1]

Municipal water supplies.

Nat. Conservation Com., *Report*, II, 178.

Lippincott, J. B., in *R. of R.*, 42 (1910), 65–73.

Many important government enterprises for water storage have been undertaken by cities which have acquired large drainage areas and constructed costly tunnels and aqueducts for the transportation of this water to the 10,000,000 or more people who are supplied from these sources. The most important of these are the systems supplying New York City. In the case of at least one city, Los Angeles, this water will be used not only as a water supply but to furnish power which, by conversion into electricity, will add greatly to the city's income.

Importance. Power now wasted which can be made available.

Nat. Conservation Com., *Report* (1909), II, 141–170.

Van Hise, *Conservation*, 118–141.

Leighton, M. O., in *A. A. A.*, 33 (1909), 535–565.

646. **Water Power.** — The waters from the Chicago drainage canal and from the government irrigation or storage dams are used likewise for power when they are located near enough for the transmission of the electricity to some city or manufacturing establishment. On account of the limited supply of timber, coal, and other fuels, the necessity of utilizing all possible water power is becoming more imperative year by year. On the amount of water power now wasted, the National Conservation Commission reported (1909) as follows: "The water power now in use is 5,250,000 horse power; the amount running over government dams and not used is about 1,400,000 horse power; the amount reasonably available equals or exceeds the entire mechanical

[1] The legal questions involved in water questions are numerous and complicated. When the streams are navigable, Congress has control of navigation. If they are non-navigable and entirely within one state, that state makes laws relating to the streams. In either case the owners of the lands on either bank at waterfalls or rapids usually have first claim on the water powers that may be developed. The rights of these riparian owners will undoubtedly be a great hindrance in utilizing the waters of the streams in the older states. In the newer states and on the public domain the rights of the public are usually protected better by constitutional provisions or by withdrawal of water power sites. (On legal questions, consult Van Hise, *Conservation*, 144–161; Wright, C. E., in *A. A. A.*, 33 (1909), 566–582.)

power now in use [probably 31,000,000 horse power] or enough to operate every mill, drive every spindle, propel every train and boat, and light every town, city, or village in the country." It is estimated that, by development, our waterfalls will furnish four or five times as much power as the total power of all kinds that is used to-day in the United States, although it must be admitted that the larger part of the power needed in industry and transportation must always come from other sources.

Conference of Governors, *Proceedings* (1908), 292–308.

Water power differs from other public utilities like oils, coal, and other mineral fuels in being renewable. The possibility of its development, the increasing value of water powers as other fuel resources are destroyed, and the danger that our water power sites may be seized and monopolized by powerful corporations have aroused public interest during recent years. Some of the states, especially New York and Wisconsin, are seeking to develop their water power resources, securing an income from the lease of water rights to private parties. In many cases water rights must be reacquired, at great expense or after protracted legal contests, from private parties, whose ownership of land adjacent to the power site gives extensive privileges. This price must be paid because these privileges were given away before the need of conservation was realized. The national government has sought to forestall the losses due to further gifts of water concessions and the dangers of monopolization by withdrawing water power sites from further entry. During the last year of President Roosevelt's term and the first year of President Taft's, the withdrawals covered sites on 126 streams, including a million and a half acres. The attempt is being made to retain these rights, leasing the use of the waters for short terms to private parties who, within a reasonable time, will develop power to be sold under federal supervision.

Conservation by our governments.

Van Hise, *Conservation*, 144–161.

Roosevelt, T., *Special Messages*, April 13, 1908, Jan. 15, 1909.

Lakeman, C. E., in *R. of R.*, 39 (1909), 57–62.

A. A. A., 33 (1909), 566–596.

647. Inland Waterways. — The development of waterways is closely related to the subjects of forestation and water conservation that we have just considered. If under-

The problem.

Roosevelt, T., in *A. A. A.*, 31 (1908), 1–11.

taken at all, it must be through the agency of our governments, and it must be developed in connection with forestry, storage reservoirs, irrigation, and soil conservation. As Gifford Pinchot says : "Every river is a unit from its source to its mouth. If it is to be given its highest usefulness to all the people and serve them for all the uses they can make of it, it must be developed with that idea clearly in mind. To develop a river for navigation alone, or power alone, or irrigation alone, is often like using a sheep for mutton, or a steer for beef, and throwing away the leather and the wool."

Canal construction.

Coman, *Indus. Hist. of U. S.*, 216–222.

Johnson, *Water Transportation*, 332–344.

Wilner, M. M., in *R. of R.*, 28 (1903), 59–67.

In the past all government expenditures for waterways have been for one of two purposes, the improvement of navigation or the extension of political influence. When the West was first becoming commercially important to the Atlantic coast, numerous canals were constructed at state expense to connect the Mississippi River system with either the Great Lakes or the ocean, or to connect the Great Lakes with the Atlantic. Some of these, especially the Erie Canal, were successful financially and exerted a very great influence, commercial and social. Most of them would have justified the expense in time but for the advent of the steam railway. Later appropriations for canals in the United States have been limited, those for the Sault Ste. Marie ship canal connecting Lake Superior with Lake Huron and for the Chicago drainage and power canal being among the most important and valuable.

River "improvements" in the past.

Johnson, E. R., in *A. A. A.*, 2 (1892), 782–812.

Fuller, H. B., in *World's Work*, 20 (1910), 13259–13273.

648. **Development of Waterways.** — A sum greater than that used for canals has been expended for river "improvements," amounting in the aggregate to nearly three hundred million dollars. Some of this was expended for necessary work; for removing obstructions, for the construction of levees to prevent the flooding of "bottom lands," for the dredging of sand-filled channels at the mouths of rivers. Most of it has been wasted, foolishly, if not criminally. Appropriations for river "improvement" which are granted to congressmen of influence are said familiarly to be made

from the "pork barrel." On many rivers sums have been expended greater than the value of commerce on those streams for a whole decade. Our policy has been less scientific than that of central Europe, where the expenditure of about a billion dollars has been made for canals and other forms of waterway development on an area about equal to that of the United States east of the Mississippi River. This has resulted in low rates and a fivefold increase of water traffic in thirty years, although the waterways cannot compete with the railways for the rapid transportation of high class freights.

Com. on Corporations, *Report on Transportation by Water*, I, 36–60.

MacPherson, *Transportation in Europe*, 176–207.

Plans have been suggested for the construction of canals which shall parallel the Atlantic and Gulf coasts, to be used by non-sea-going craft, or in time of storm or war. River improvement is being considered by some of the states in connection with storage systems. By far the greatest, most necessary, and most important of the proposed deep-waterway improvements are those of the Erie Canal and of the Mississippi River. A ship canal from Lake Erie to the Hudson River would be of great value to commerce from the Great Lake region to the Atlantic coast. The Mississippi River, after great expenditures, now offers a dangerous channel to comparatively small craft. It carries from the farms and hillsides soil which is worth about a half billion dollars a year. A plan for proper improvement would include storage reservoirs in the western Appalachians, at the headwaters of the Mississippi, and in the eastern Rocky Mountains. It should provide for canalization, with a depth of at least ten feet for the Ohio, and for the Mississippi with the Illinois to Lake Michigan, constituting the so-called "Lake to Gulf deep-waterway." Although these proposed changes have not met with the full approval of government engineers, it is generally believed that they would relieve railway freight congestion and reduce rates that are now exorbitant.

Proposed waterways.

Van Hise, *Conservation*, 172–179.

A. A. A., 31 (1908), 36–66.

Conference of Governors, *Proceedings* (1908), 272–282.

648. Fuel Minerals. — Although the development of our water powers will reduce the demand for mineral fuels, every possible protective measure should be used to conserve the

Waste of mineral fuels.

Van Hise, *Conservation*, 23–35, 48–61.

Conference of Governors, *Proceedings* (1908), 26–39.

Mineral deposits on public lands.

Nat. Conservation Com., *Report* (1909), III, 417–421.

Mitchell, G. E., in *R. of R.*, 41 (1910), 193–204.

supply of our coal, petroleum, and natural gas — fuels that can never be renewed. As Theodore Roosevelt has pointed out, these precious fuels and lubricants must be treated as public utilities, supervised for the public good, not exploited for private gain.[1]

Comparatively little of the apparent supply of natural gas is to be found on the present public lands. There is a larger amount of oil lands for which no special laws have ever been enacted. On the other hand, nearly one-half of the coal fields are located in public lands, a supply that at a lease of three cents a ton — a low royalty — should bring the United States a total revenue of more than twenty billion dollars, an amount equal to one-fifth of the estimated wealth of this country at the present time. Although comparatively small quantities of coal land were sold under the coal land laws, it is estimated that more than 40,000,000 acres have been secured by private parties, through the railway land grants, as agricultural or desert lands, in ignorance of its mineral deposits or by fraudulent misrepresentation of its real character.

Revision of the coal land laws.

Van Hise, *Conservation*, 35–46.

Ashley, G. H., in U. S. Geol. Survey, *Bulletin* 424.

There were no laws providing for the sale of coal lands until the close of the War for the Union. The law of 1864, modified in 1873, provided that 160 acres might be sold to one citizen or 640 acres to an association of four citizens, if properly developed, at not less than $20 per acre, if near a railway, or not less than $10 if more than fifteen miles from a railway. The law provides penalties of forfeiture and punishment, for the combination of more than four of these quarter sections into a single holding. On discovery of fraud in obtaining coal lands President Roosevelt withdrew most of the lands on the public domain, pending a

[1] It is possible that in the future our governments may fix the maximum price at which anthracite coal may be sold, since it is used chiefly for household heating and cooking and is controlled by a few large railway corporations. On the Pennsylvania anthracite coal supply before the Interstate Commerce Law of 1906 was passed (§ 613), see Industrial Commission, *Final Report*, XIX, page 444. There is a fairly large supply of anthracite coal also in Alaska.

careful examination of their quality and value. These have been offered for sale at prices dependent on quality of coal, thickness of the beds, ease of mining, and distance from transportation. A maximum price is usually set at $300, although recent Secretaries of the Interior favor the leasing of coal lands on a basis of tonnage in much larger tracts than 160 acres, as it is not profitable to mine coal on such a small scale.[1] In leasing the coal beds, there is no interference with the use of the surface, as the surface land is sold separately for agriculture, grazing, or lumbering. The claim that exceedingly valuable Alaskan lands were being patented fraudulently led in 1909 to a congressional investigation of the official conduct of the Secretary of the Interior, and aroused great interest in the conservation of the exceedingly valuable coal deposits of the public domain. This interest was probably an important reason for the withdrawal of large tracts of coal, petroleum, and phosphate lands, and water-power sites, amounting at the close of the year 1910 to nearly one hundred million acres, chiefly of coal lands, although none in Alaska had been included.

Metallic mineral lands.

Van Hise, *Conservation*, 96–101.

Nat. Conservation Com., *Report* (1909), III, 413–416.

650. **Other Mineral Resources.** — Mineral resources much less valuable than the coal deposits exist on lands once public property, although apparently there is little iron, copper, gold, silver, or other metal deposits left on the public domain. A century and a quarter ago, when the first land laws were passed, "one-third part of all gold, silver, lead, and copper mines" were to be reserved for the central government. This policy was abandoned without having been used, when lands with lead deposits were sold as other public lands. The first regular metallic mineral land law was passed in 1866, after great quantities of gold had been found in California on public land. The law provides now that any citizen or prospective citizen may locate a claim not exceeding three hundred feet on either side of a vein or lode, extend-

[1] Leasing of coal lands has been tried successfully by Wyoming and Colorado.

ing not more than fifteen hundred feet along the vein and to any depth, payment of $5 an acre to be made for the land. Aside from the conservation of mineral deposits on public lands, the present government problems are the prevention of waste in mining, the protection of the public from the great corporations that have gained control of most of the iron and copper deposits, and the protection of the lives and health of miners.

Phosphate lands.

Van Hise, C. R., in *A. A. A.*, 33 (1909), 699–710.

On the public domain there are several million acres of land exceedingly rich in deposits of phosphate rock, a mineral that makes the best possible fertilizer for renewing or increasing the fertility of agricultural lands. Most of this land has been reserved by Presidents Roosevelt and Taft.

Soil conservation.

J. J. Hill, in Conference of Governors, *Proceedings* (1908), 63–75.

Hopkins, C. G., in *A. A. A.*, 33 (1909), 631–646.

Poe, C. H., in *World's Work*, 9 (1905), 5955–5964.

651. Conservation of Other Resources. — By conservation of these phosphate beds, by the prevention of erosion through forestation and the prevention of floods, by making arid or alkali lands suitable for cultivation, by reclaiming exceedingly fertile swamp lands by drainage,[1] the governments have begun a work in the saving of our most valuable natural asset, the soil. By giving instruction in the qualities and uses of soils, in dry farming to preserve subsoil moisture, in better selection of seeds, in the importance of rotation of crops and better methods of cultivation, our national and state departments of agriculture, aided by the state agricultural colleges and experiment stations, are using their present limited means to secure better results for the present without robbing the future.

Fish supplies.

Boche, R., in *Outing*, 47 (1905), 182–191.

More use will be made in the years to come of the food supplies furnished by our lakes, rivers, and seacoast waters. The national bureau of Fisheries, supplemented by many state bureaus, is doing a valuable work in stocking with fish

[1] The swamp lands of the public domain were in 1850 transferred to the states within which they occurred, with the expectation that they would be reclaimed. Some swamp lands are still held by the national government and by the states. It is believed that an area equal to that of the six New England states can be drained and made very productive at a cost less than one-half of the value added to the lands. (On swamp lands, see Nat. Conservation Com., *Report* (1909), III, 361–374.)

these bodies of water. Millions of fish are taken each year from the fish hatcheries to the streams where these varieties thrive most successfully.

Prevention of waste by fire.

One of our greatest wastes, avoided in most countries of the Old World, comes from the unnecessary destruction of property by fire.[1] On account of our defective building laws buildings valued at more than two hundred million dollars are burned every year, although our city governments pay very large sums for good fire-fighting apparatus and expend large amounts yearly on their fire departments. Incidental losses, such as these expenditures, unnecessarily high insurance premiums and others, amount to about the same as the value of the property that is burned, while many lives are sacrificed each year in fires.

Freitag, J. K., in *Engineering Mag.*, 31 (1906), 321–328.

Nat. Conservation Com., *Report* (1909), III, 604–619.

Mistakes of the past.

652. **The Past and the Future.** — The recently awakened interest in the subject of natural resources should arouse the American people to the importance and the need of discovering those policies that will make the best use of all our natural resources, for the present and for the future. We must learn from our mistakes, realizing as Albert Bushnell Hart wrote a score of years ago, words almost as true to-day as then (*Practical Essays on American Government*, p. 251): "The golden time is past; our agricultural land is gone; our timber lands are fast going; our coal and mineral lands will be snapped up as fast as they prove valuable. There is no great national reserve left in the public lands unless there should be a change in the policy. Should disaster overtake us, we must depend, like other nations, on the wealth of the people and not on that of the government."

Present outlook.

We have seen in recent years the adoption of a much saner administrative policy in regard to forests and in regard to coal lands. The future must bring a much greater development of governmental action for the conservation of our soil

Van Hise, *Conservation*, 381–401.

[1] Some people estimate the losses due to destruction of property by smoke from furnaces and factories as little less than the loss by fire. The compulsory adoption of smoke-consuming devices in many cities is reducing the amount of this inexcusable waste.

and water, as well as other resources. Especially should those most necessary to life be treated as public utilities, to be protected from monopoly control and used without waste at reasonable prices for the good of the public.

Human life.

Van Hise, *Conservation*, 364–372.

Nat. Conservation Com., *Report* (1909), III, 671–752.

Most important of all, if little, as yet, under the supervision of our governments, is the conservation of human life. When we notice the appalling losses due to our haste in the search for wealth, to our carelessness or indifference, we must recognize the need of remedial legislation.[1] Few nations have done as much as we to discourage and prevent the spread of contagious diseases, but we must expect in the future a much greater amount of governmental supervision, possibly of direct interference, for the conservation of life and health. What shall it profit our nation, if it shall conserve its natural resources, and sacrifice the lives of its people?

QUESTIONS AND REFERENCES

Conservation (§§ 633–635)

1. If a different policy had been followed in regard to conserving natural resources in the past, is it probable that, by developing "a paternalism without rival, in its possibilities, in the history of nations," we might have retarded or even prevented the development of democracy in America?

2. Will not the attempt to conserve natural resources lead to greater centralization of authority in our Federal State?

3. Is there not danger that any radical change of governmental policies may retard our economic development?

4. State some of the legal and political problems of conserving natural resources now privately owned. Show the significance of President Hadley's statement that the Fourteenth Amendment guards property rights in the United States more strongly than they are protected in any other country in the civilized world.

National Land Policy (§§ 636–641)

a. Land grants to transcontinental railways are treated in Sanborn, *Congressional Grants of Land in Aid of Railways*, 62–92, 119–126;

[1] Cf. §§ 623, 625.

Sato, S., in J. H. U. S., IV, viii-ix; Donaldson, *The Public Domain*, 766–768, 805–811, 818–823, 861–895, 908–943; map opp. 948.

b. On reclamation work under the law of 1902 consult *Report of Smithsonian Institution*, (1904) 827–841, (1905) 373–388, (1906) 469–492; Wright, H., in *World To-day*, 10 (1906), 156–163; Page, A. W., in *World's Work*, 14 (1907), 9322–9330; Lemenager, H. V., in *R. of R.*, 37 (1908), 689–698; Blanchard, C. J., in *Nat. Geographic Magazine*, Feb. 1906, Apr. 1907, Apr. 1908, 20 (1909), 403–437, 21 (1910), 333–360.

1. Give historical reasons, and criticisms from present point of view, for all changes in the agricultural land laws. Which seemed most necessary at the time? Which appears wisest now?

2. What was the real value of the school lands granted? Why was not the earlier policy of granting lands to corporations through the states used for the transcontinental railways? In the case of these grants, why were "the immediate gains more than counterbalanced by the ultimate losses"?

3. How might the advantages of the homestead laws have been retained, without including the serious disadvantages? Could any law be devised to keep the quarter sections as permanent homesteads? Would such a law be desirable?

4. What are the objections to disposing of any or all agricultural lands by lot? for nominal fees, if homesteads, or at cost, if irrigated lands? Should all lands in any area opened to entry be disposed of at the same price?

5. Has our system applied to agricultural lands been unwise?

i. Is this a "public land" state? If so, locate the nearest base line and principal meridian? What has been the policy of the state with reference to its school lands or other lands?

ii. Give statistics of government reclamation work; number of reservoirs completed, location, area made arable, area actually settled.

Policy regarding Water and Timber (§§ 642–647)

a. Proposed improvement of waterways, Bureau of Corporations, *Report* (1909); Inland Waterways Commission, *Preliminary Report* (1908); Mathews, *Remaking the Mississippi; A. A. A.*, Jan. 1908.

1. What causes will tend to prevent the total destruction of our timber supply? Show the value of our national forest reserves. What is the importance of the Appalachian reserves?

2. Explain and criticise each of the following statements (Nat. Conservation Com., *Report*, I, p. 48): "It is roughly estimated that the

direct benefits [of and expenditure of $500,000,000 for waterway development, forestation, and water storage] would comprise an annual saving in transportation of $250,000,000; an annual saving in flood damage of $150,000,000; an average annual saving in forest fires of at least $25,000,000; an annual benefit through cheapened power of fully $75,000,000; and an annual saving in soil erosion (or corresponding benefit through increased farm production) of $500,000,000 — a total of $1,000,000,000, or $12.50 per capita, annually, *i.e.* twenty times the cost," which should be expended in the annual payments.

3. Show the importance of water power in the saving of fuels. Why should water, coal, petroleum, and natural gas be considered public utilities?

4. What is the extent of monopoly in fuel resources? of metallic ore deposits? What are the objection and the danger in each case?

5. State importance of a system of seacoast canals; of deep inland waterways.

i. Give the location and area of forest reserves in this state. Summarize the state forest laws and policy.

ii. What water power may be utilized now in different sections of the country? Where may greater power be developed? (Nat. Conservation Com., *Report* (1909), II, 141–170.)

Other Resources (§§ 647–650)

1. Compare the policy of leasing coal lands with that of sale. Is there any objection to separating the surface lands from the deposits of coal? Why should the government permit the legal aggregation of areas greater than 640 acres?

2. Compare the probable value of all coal deposits: with the supply of other mineral fuels; with the deposits of precious metals; with those of all other metals.

3. Should not phosphate rock be treated as a public utility? Why do soil conservation and agricultural development constitute a proper phase of governmental activity?

4. Classify all natural resources (1) as renewable or non-renewable; (2) as limited in amount or existing in great quantity; (3) as publicly or privately owned; (4) as easily monopolized or naturally under separate ownership; (5) as properly used, misused, or neglected.

5. To what extent should ideas regarding individual liberty be allowed to interfere with the conservation of natural resources? with that of human resources?

i. Name the unnecessary and criminal wastes in the mining of coal; in the misuse of soils.

CHAPTER XXX

THE DUTIES OF CITIZENSHIP

Story from Plutarch.

653. **The Twin Virtues of Citizenship.**—Through the writings of Plutarch there has come down to us the story of an old man who, desiring to witness the Olympian games, was searching for a seat among the crowd of spectators which amused itself by making fun of him. He came finally to a body of Spartans, most of whom rose at once and requested him to be seated. Thereupon the assembly applauded, and the old man was led to exclaim, "Alas! *all* the Greeks *know* what is right, but only the Lacedæmonians practise it."

Knowledge and action twin civic virtues.

The words that were spoken of the Lacedæmonians can fitly be applied to all who possess the twin virtues of citizenship—knowledge and action—for the two are inseparable if they are to become useful in the possession of any citizen. It is not enough that we should be fully informed regarding the structure and operation of our political system and be able to talk learnedly of the great events in our constitutional history; we must be prepared to give our time and our talents to whatever civic tasks our country may call us, even when they involve a drudgery that may be distasteful.

An intelligent comprehension of our political system and of present conditions.

654. **The Knowledge that makes for Good Citizenship.**—By knowledge is meant more than an abundance of information relating to isolated historical events or single departments of government; it refers rather to an intelligent comprehension of the course of development during our previous history; together with a reasonably full knowledge of the real character of our federal union, of the organization and powers of the national, state, and local governments; supplemented by a fairly definite appreciation of the conditions that exist

around us, of the problems that confront us, and of our own duty and limitations under the circumstances — all of these fitted into a unified and organized whole in which the relation of each part to every other is recognized and understood. Such an ideal can of course be realized in the lives of very few men who have had extended opportunities for study and observation, but it should be the goal toward which we are all striving. It is much deeper than any knowledge that can be obtained from books, valuable as that may be in presenting a few fundamental truths; for, unless it gives a real insight into the character of men and the motives which prompt them, it will be knowledge without comprehension — learning without wisdom.

Inseparability of the two.

655. Knowledge and Action as Twin Virtues. — Knowledge by itself is static, to become a true virtue of citizenship it must be joined to its twin, action, and be made dynamic. Otherwise the scathing though veiled condemnation which the old Greek applied to his fellow-countrymen may with equal truth be used of us. Instead of an extensive knowledge being a sufficient excuse for not participating in the duties of citizenship on the ground that it is a substitute for civic activity, it, on the contrary, creates an obligation which we cannot escape. Like a mediæval knight, the modern American citizen must remain faithful to the motto, "*noblesse oblige*," though now it is a nobility of manhood and not one of birth which compels us to rise to the best that is in us. We hear it said sometimes that the best citizens take least part in politics, but the expression is a contradiction of terms. The very idea of citizenship is one of reciprocal obligation between the State and its members, and no social position or business standing can entitle any man to be called even a good citizen who neglects his civic duties. But let us not err in the other direction, and imagine that the best citizen is the one who is most prominent in the noise and furore of political campaigns. He is not likely to come nearest our ideal of citizenship whose sole claim to this distinction is his conspicuous efforts every four years to "save

the country." True action, as we may well learn from Mother Nature, is more often than not silent in its workings. Bluster and indolence alike have no place in it. It is earnest without being demonstrative, continuous and not spasmodic. Each man who according to his opportunity, not unmindful of the lesser and more common duties, works for the good of his country in the way for which his tastes and capacity fit him, has earned the title of a loyal citizen.

Uselessness of action without knowledge.

As knowledge without action is vanity, so is action without knowledge folly. The old though cruel proverb about good intentions expresses a truth that should not be overlooked even by those well-meaning persons who carry out their intentions, but in ignorance. Enthusiasm is a powerful social force when rightly used ; but, if coupled with bigotry, or narrowness, or selfishness, may yet, as has so often been the case, menace both liberty and order, and produce results that are dangerous to the greatest good of the State and society.

Value and limitations of historical analogy.

656. Analogies from Experience. — Our country is constantly called upon to solve problems that are in many respects similar to those of the past, but which involve new elements, and which arise under new conditions. If we notice carefully the most successful solutions reached by our ancestors, as in the framing of the national Constitution, we can scarcely fail to be impressed with the ways in which they utilized those political experiences which had stood the test of time, not copying slavishly after earlier statesmen, and yet not breaking with the past except in adapting their work to needs which formerly had no existence. Our own duty in regard to questions of to-day requires that we be prepared to do as they did ; to break fearlessly from tradition when the occasion demands ; and yet continue unbrokenly the development which has marked previous decades, counteracting so far as we can its evil tendencies, and infusing into its latent possibilities for good a new life and spirit. The principles of political growth are the same now as then, and would be found but few in number could we but see

more clearly. For that reason the changes of the present are very much like those of previous times, but only in a general way, and never in particulars does history repeat itself. Historical analogy has therefore the highest value if used with great care, though it never furnishes models for indolent workmen.

The average citizen and civic problems.

To most of us the civic duties relating to policies and problems of the future do not require that we propose solutions, but merely that we approve or disapprove those which abler minds consider suitable. It is not only at the polls that the feelings of the nation may make themselves felt, but in the potent though silent influence of public sentiment; for in the long run the policies of a government like ours are moulded by the real desire or by the indifference of the average citizen.

Political ills are growing less numerous.

657. The Injustice of Pessimism. — We shall be unable to make the most of the opportunities that come to us if we assume the duties of citizenship in a spirit of pessimism. From the standpoint of citizenship, pessimism is wrong not only because it deadens activity, but because it is groundless. There are, to be sure, many virtues which were prominent a century or two ago that are uncommon to-day. Times have indeed changed, yet not for the worse. Those halcyon days in the heroic period of American history which drew to the front so many men of superior ability, do not on close examination compare very favorably with those in our own memory. Were the political and constitutional questions now relatively as important as those that commanded the attention of Washington, Hamilton, Jefferson, and Marshall, there is little doubt that men of genius would be attracted to politics rather than to some more promising line of employment. But even as it is we cannot find in the last twenty years of the nineteenth century, scenes more disgraceful than history records in the last two decades of the eighteenth. The former are flaunted in our faces, the latter almost buried in oblivion; yet even the deadening effect of Time cannot erase them. What was the strife between Blaine

and Conkling to the Hamilton-Adams feud, from which the Federalist party never recovered? Where can we find party enmity so bitter as in the administration of Washington, the most maligned of Presidents? Where shall be encountered stronger prejudices, more local selfishness, than during the Revolution and under the Confederation, or a more intense spirit of hatred than that shown the Tories after independence was established? But why multiply illustrations? Enough has been said to show that even in the days of simple life, when political ills should have been less numerous and less noticeable, there were faults with the virtues. While we have more than enough of our own, it can be said without fear of contradiction that the general standards of public life and morality are higher than they were then, and will be higher in a hundred years than they are at present. The civic conscience is far from being fully awakened, but is more active than it was a few decades ago. The decalogue and the golden rule have all too small a place in public life; but there is no less honesty and integrity among public servants than in the days of our fathers; while among the common people there is more intelligence, less prejudice, deeper sympathy for the oppressed, in short, a truer adherence to the principles of justice and righteousness proclaimed by the great Teacher. As Professor Moses so forcefully expresses it, "Humanity is marching steadily uphill."

The nature of patriotism.

658. Patriotism. — What is patriotism? What does it include? It may be defined as devotion to the best interests of one's country. It is a thing of peace as well as war. Whatever the nation needs that we may do, patriotism demands. Subordination of personal wishes to the general welfare is necessarily one of its requirements, for the good of all is before that of any individual. However, it should never be conceived in a spirit of narrow national pride. We may not proclaim with Fénelon that we are citizens of the whole world, but we should remember that true patriotism will not in its zeal overlook the rights of humanity beyond our own borders. Not a great while ago allegiance to a

state was held to be above that to the nation by many of those who helped to found this republic. History has since decided that loyalty to a state must yield to national loyalty; and, although History is not likely to decide soon that loyalty to a nation is below that to a great World State, nevertheless there is danger that we may fail to do what is best for our own beloved land, because in our enthusiasm we make the mistake of thinking that our country, whether right or wrong, must be unswervingly upheld, when no national honor but the rights of others are involved. On the other hand, care should be taken not to minimize the value of constant and earnest allegiance to the United States and all that our flag represents. The pathetic tale of Edward Everett Hale, entitled "The Man without a Country," teaches a lesson that should come home to all who lack not so much in patriotism as in interest. With hearts full of gratitude, and pride in the land that gave us birth, let us take to ourselves that noble sentiment in which Abraham Lincoln summoned his fellow-citizens to a higher plane of civic duty in the crisis of '65, and "with malice toward none, with firmness in the right, as God gives us to see the right, let us strive on to finish the work we are in."

APPENDICES

APPENDICES

APPENDIX A

THE ARTICLES OF CONFEDERATION

Articles of Confederation and Perpetual Union between the States of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia.

Article I. — The style of this Confederacy shall be, "The United States of America."

Article II. — Each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right which is not by this Confederation expressly delegated to the United States in Congress assembled.

Article III. — The said States hereby severally enter into a firm league of friendship with each other, for their common defense, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other against all force offered to or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretense whatever.

Article IV. — [1] The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all the privileges and immunities of free citizens in the several States; and the people of each State shall have free

ingress and regress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions and restrictions as the inhabitants thereof respectively; provided that such restrictions shall not extend so far as to prevent the removal of property imported into any State to any other State of which the owner is an inhabitant; provided also, that no imposition, duties, or restriction shall be laid by any State on the property of the United States or either of them. [2] If any person guilty of, or charged with, treason, felony, or other high misdemeanor in any State shall flee from justice and be found in any of the United States, he shall, upon demand of the governor or executive power of the State from which he fled, be delivered up and removed to the State having jurisdiction of his offense. [3] Full faith and credit shall be given in each of these States to the records, acts, and judicial proceedings of the courts and magistrates of every other State.

Article V.— [1] For the more convenient management of the general interests of the United States, delegates shall be annually appointed in such manner as the Legislature of each State shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each State to recall its delegates, or any of them, at any time within the year, and to send others in their stead for the remainder of the year. No State shall be represented in Congress by less than two, nor by more than seven members; and no person shall be capable of being a delegate for more than three years in any term of six years; [2] nor shall any person, being a delegate, be capable of holding any office under the United States for which he, or another for his benefit, receives any salary, fees, or emoluments of any kind. [3] Each State shall maintain its own delegates in any meeting of the States and while they act as members of the Committee of the States. In determining questions in the United States, in Congress assembled, each State shall have one vote. Freedom of speech and debate in Congress shall not be impeached or questioned in any court or place out of Congress; and the members of Congress shall be protected in their persons from arrests and imprisonment during the time of their going to and from, and attendance on, Congress, except for treason, felony, or breach of the peace.

Article VI. — [1] No State, without the consent of the United States, in Congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance, or treaty with any king, prince, or state; [2] nor shall any person holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office, or title of any kind whatever from any king, prince, or foreign state; [3] nor shall the United States, in Congress assembled, or any of them, grant any title of nobility.

[4] No two or more States shall enter into any treaty, confederation or alliance whatever between them, without the consent of the United States, in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

[5] No State shall lay any imposts or duties which may interfere with any stipulations in treaties entered into by the United States, in Congress assembled, with any king, prince, or state, in pursuance of any treaties already proposed by Congress to the courts of France and Spain.

[6] No vessels of war shall be kept up in time of peace by any State except such number only as shall be deemed necessary by the United States, in Congress assembled, for the defense of such State or its trade; nor shall any body of forces be kept up by any State in time of peace, except such number only as in the judgment of the United States, in Congress assembled, shall be deemed requisite to garrison the forts necessary for the defense of such State; but every State shall always keep up a well-regulated and disciplined militia, sufficiently armed and accoutered, and shall provide and constantly have ready for use in public stores a due number of field pieces and tents, and a proper quantity of arms, ammunition and camp equipage.

[7] No State shall engage in any war without the consent of the United States, in Congress assembled, unless such State be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such State, and the danger is so imminent as not to admit of a delay, till the United States, in Congress assembled, can be consulted; nor shall any State grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States, in Congress assembled, and then only against the kingdom or state, and the

subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United States, in Congress assembled, unless such State be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States, in Congress assembled, shall determine otherwise.

Article VII. — [1] When land forces are raised by any State for the common defense, all officers of or under the rank of Colonel shall be appointed by the Legislature of each State respectively by whom such forces shall be raised, or in such manner as such State shall direct, and all vacancies shall be filled up by the State which first made the appointment.

Article VIII. — All charges of war, and all other expenses that shall be incurred for the common defense or general welfare, and allowed by the United States, in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several States in proportion to the value of all land within each State, granted to, or surveyed for, any person, as such land and the buildings and improvements thereon shall be estimated, according to such mode as the United States, in Congress assembled, shall, from time to time, direct and appoint. The taxes for paying that proportion shall be laid and levied by the authority and direction of the Legislature of the several States, within the time agreed upon by the United States, in Congress assembled.

Article IX. — [1] The United States, in Congress assembled, shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth Article; [2] of sending and receiving ambassadors; [3] entering into treaties and alliances, provided that no treaty of commerce shall be made, whereby the legislative power of the respective States shall be restrained from imposing such imposts and duties on foreigners as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatever; [4] of establishing rules for deciding, in all cases, what captures on land and water shall be legal, and in what manner prizes taken by land or naval forces in the service

of the United States shall be divided or appropriated; of granting letters of marque and reprisal in times of peace; appointing courts for the trial of piracies and felonies committed on the high seas; [5] and establishing courts for receiving and determining finally appeals in all cases of captures; provided that no member of Congress shall be appointed a judge of any of the said courts.

[6] The United States, in Congress assembled, shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more States concerning boundary, jurisdiction, or any other cause whatever; which authority shall always be exercised in the manner following: Whenever the legislative or executive authority, or lawful agent of any State in controversy with another, shall present a petition to Congress, stating the matter in question, and praying for a hearing, notice thereof shall be given by order of Congress to the legislative or executive authority of the other State in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint, by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question; but if they cannot agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven nor more than nine names, as Congress shall direct, shall, in the presence of Congress, be drawn out by lot; and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination; and if either party shall neglect to attend at the day appointed, without showing reasons which Congress shall judge sufficient, or being present, shall refuse to strike, the Congress shall proceed to nominate three persons out of each State, and the secretary of Congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court, to be appointed in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence or judgment, which shall in like manner be final and

decisive; the judgment or sentence and other proceedings being in either case transmitted to Congress, and lodged among the acts of Congress for the security of the parties concerned; provided, that every commissioner, before he sits in judgment, shall take an oath, to be administered by one of the judges of the supreme court of the State where the cause shall be tried, "well and truly to hear and determine the matter in question, according to the best of his judgment, without favor, affection, or hope of reward." Provided, also, that no State shall be deprived of territory for the benefit of the United States.

[7] All controversies concerning the private right of soil claimed under different grants of two or more States, whose jurisdictions, as they may respect such lands and the States which passed such grants are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall, on the petition of either party to the Congress of the United States, be finally determined, as near as may be, in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different States.

[8] The United States, in Congress assembled, shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective States; fixing the standard of weights and measures throughout the United States; [9] regulating the trade and managing all affairs with the Indians, not members of any of the States; provided that the legislative right of any State, within its own limits, be not infringed or violated; [10] establishing and regulating post offices from one State to another, throughout all the United States, and exacting such postage on the papers passing through the same as may be requisite to defray the expenses of the said office; [11] appointing all officers of the land forces in the service of the United States, excepting regimental officers; appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States; making rules for the government and regulation of the said land and naval forces, and directing their operations.

[12] The United States, in Congress assembled, shall have authority to appoint a committee, to sit in the recess of Congress, to be denominated, "A Committee of the States," and to consist of one delegate from each State; and to appoint such

other committees and civil officers as may be necessary for managing the general affairs of the United States under their direction; [13] to appoint one of their number to preside, provided that no person shall be allowed to serve in the office of president more than one year in any term of three years; [14] to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses; [15] to borrow money or emit bills on the credit of the United States, transmitting every half year to the respective States an account of the sums of money so borrowed or emitted; [16] to build and equip a navy; [17] to agree upon the number of land forces, and to make requisitions from each State for its quota, in proportion to the number of white inhabitants in such State, which requisition shall be binding; and thereupon the Legislature of each State shall appoint the regimental officers, raise the men, and clothe, arm, and equip them in a soldier-like manner, at the expense of the United States; and the officers and men so clothed, armed, and equipped shall march to the place appointed, and within the time agreed on by the United States, in Congress assembled: but if the United States, in Congress assembled, shall, on consideration of circumstances, judge proper that any State should not raise men, or should raise a smaller number than its quota, and that any other State should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, clothed, armed, and equipped in the same manner as the quota of such State, unless the Legislature of such State shall judge that such extra number can not be safely spared out of the same, in which case they shall raise, officer, clothe, arm, and equip as many of such extra number as they judge can be safely spared, and the officers and men so clothed, armed, and equipped shall march to the place appointed, and within the time agreed on by the United States, in Congress assembled.

[18] The United States, in Congress assembled, shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defense and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war to be built or purchased, or

the number of land or sea forces to be raised, nor appoint a commander-in-chief of the army or navy, unless nine States assent to the same; nor shall a question on any other point, except for adjourning from day to day, be determined, unless by the votes of a majority of the United States, in Congress assembled.

[19] The Congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States so that no period of adjournment be for a longer duration than the space of six months, and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances, or military operations as in their judgment require secrecy; and the yeas and nays of the delegates of each State, on any question, shall be entered on the journal when it is desired by any delegate; and the delegates of a State, or any of them, at his or their request, shall be furnished with a transcript of the said journal except such parts as are above excepted, to lay before the legislatures of the several States.

Article X. — The Committee of the States, or any nine of them, shall be authorized to execute, in the recess of Congress, such of the powers of Congress as the United States, in Congress assembled, by the consent of nine States, shall, from time to time, think expedient to vest them with; provided, that no power be delegated to the said Committee, for the exercise of which, by the Articles of Confederation, the voice of nine States in the Congress of the United States assembled is requisite.

Article XI. — Canada, acceding to this Confederation, and joining in the measures of the United States, shall be admitted into, and entitled to all the advantages of this Union; but no other colony shall be admitted into the same, unless such admission be agreed to by nine States.

Article XII. — All bills of credit emitted, moneys borrowed, and debts contracted by or under the authority of Congress, before the assembling of the United States, in pursuance of the present Confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States and the public faith are hereby solemnly pledged.

Article XIII. — Every State shall abide by the determinations of the United States, in Congress assembled, on all questions which by this Confederation are submitted to them. And the Articles of this Confederation shall be inviolably observed by every State, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them, unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the Legislatures of every State.

And whereas, it hath pleased the great Governor of the world to incline the hearts of the Legislatures we respectively represent in Congress to approve of, and to authorize us to ratify, the said Articles of Confederation and perpetual Union; know ye, that we, the undersigned delegates, by virtue of the power and authority to us given for that purpose, do, by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said Articles of Confederation and perpetual Union, and all and singular the matters and things therein contained. And we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the United States, in Congress assembled, on all questions which by the said Confederation are submitted to them: and that the Articles thereof shall be inviolably observed by the States we respectively represent, and that the Union shall be perpetual. In witness whereof, we have hereunto set our hands in Congress. Done at Philadelphia, in the State of Pennsylvania, the ninth day of July, in the year of our Lord 1778, and in the third year of the Independence of America.

APPENDIX B

CONSTITUTION OF THE UNITED STATES — 1787

Preamble. Objects of the Constitution (cf. A. of C., Art. III).

WE THE PEOPLE of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this CONSTITUTION for the United States of America.

ARTICLE. I.

CONGRESS. Two houses.

Section 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

HOUSE OF REPRESENTATIVES. Term and election.

Section 2. [1] The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

Qualifications — age, citizenship, residence.

[2] No Person shall be a Representative who shall not have attained to the age of twenty-five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Method of apportioning representatives. (Part in brackets superseded by Sec. 2 of Amendment XIV.)

[3] [Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.] The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States,

A. of C. = Articles of Confederation.

and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three. Census. Temporary apportionment.

[4] When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies. Vacancies.

[5] The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment. Officers.

Section 3. [1] The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote. SENATE. Election and term (cf. A. of C., Art. V[1]).

[2] Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one-third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies. Division of Senators into three classes. Vacancies.

[3] No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen. Qualifications—age, citizenship, residence.

[4] The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided. Vice-president.

[5] The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States. Officers (cf. A. of C., Art. IX[18]).

Trial of impeachments.

[6] The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in cases of impeachment.

[7] Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

BOTH HOUSES. Times, places, and method of electing members.

Section 4. [1] The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

Time of meeting.

[2] The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

Membership regulations. Quorum.

Section 5. [1] Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Rules of each house.

[2] Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

Journals (cf. A. of C., Art. IX[19]).

[3] Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Special adjournments.

[4] Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Section 6. [1] The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by

law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony, and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place. Compensation and privileges of members (cf. A. of C., Art. V[3]).

[2] No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time: and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office. Disabilities of members (cf. A. of C., Art. V[2]).

Section 7. [1] All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills. Revenue bills.

[2] Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law. Veto of President on bills (cf. A. of C., Art. IX[18]).

[3] Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States and before the Same shall take Effect, shall be approved by him, or being disapproved by him, Veto on resolutions.

shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Powers of Congress.

Section 8. The Congress shall have Power [1] To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all duties, Imposts and Excises shall be uniform throughout the United States;

Taxation (cf. A. of C., Art. VIII).

Borrowing.[1]

[2] To borrow Money on the credit of the United States;

Regulating commerce.[2]

[3] To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

Naturalization and bankruptcy.

[4] To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

Coins, weights, and measures.

[5] To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

Counterfeiting.

[6] To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

Post offices.[3]

[7] To establish Post Offices and post Roads;

Patents and copyrights.

[8] To promote the Progress of Science and useful Arts by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

Inferior courts.[4]

[9] To constitute Tribunals inferior to the supreme Court;

Piracies.

[10] To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

War (cf. A. of C., Art. IX[1, 4]).

[11] To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

Army.[5]

[12] To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

Navy.[6]

[13] To provide and maintain a Navy;

Land and naval forces.[7]

[14] To make Rules for the Government and Regulation of the land and naval Forces;

Militia, in service.

[15] To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

Militia, organization.

[16] To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed

[1] Cf. A. of C., Art. IX[15].
[2] Cf. A. of C., Art. IX[8, 9].
[3] Cf. A. of C., Art. IX[10].
[4] Cf. A. of C., Art. IX[5].
[5] Cf. A. of C., Art. VII[1], Art. IX[17].
[6] Cf. A. of C., Art. IX[16].
[7] Cf. A. of C., Art. IX[11].

in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

Seat of government and stations.

[17] To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And

Supplementary legislation.

[18] To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Limitations on powers of Congress.

Section 9. [1] The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

Slave trade.

Habeas corpus.

[2] The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

Bills of attainder and ex post facto laws.

[3] No Bill of Attainder or ex post facto Law shall be passed.

Direct tax.

[4] No Capitation, or other direct, tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

Tax on exports.

[5] No Tax or Duty shall be laid on Articles exported from any State.

Uniform commercial regulations.

[6] No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

Finance.

[7] No money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

Titles of nobility and presents (cf. A. of C., Art. VI 2, 3).

[8] No title of Nobility shall be granted by the United States. And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

Limitations on powers of States.

Specific prohibitions (cf. A. of C., Art. VI 1, 3, 4).

Section 10. [1] No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit, make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the obligation of Contracts, or grant any Title of Nobility.

Limitations on imposts (cf. A. of C., Art. VI 5).

[2] No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

Prohibitions removable with consent of Congress (cf. A. of C. Art. VI 6, 7).

[3] No State shall, without the Consent of Congress, lay any Duty of tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

Article. II.

President (cf. A. of C., Art. IX 12, Art. X). Term.

Section 1. [1] The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same term, be elected, as follows:

Presidential electors and method of choosing President.

[2] Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector. [The electors shall meet in their respective States, and vote by ballot for two Persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they

(Part in brackets superseded by XII Amendment.)

shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two-thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.]

Dates of elections.

[3] The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

Qualifications, citizenship, age, and residence.

[4] No Person except a natural born Citizen, or a citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

Presidential succession.

[5] In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation, or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

Compensation.

[6] The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been

elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Oath of office.

[7] Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation: — "I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

Powers of President.

Section 2. [1] The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

Military, supervisory, and judicial.

In treaties and in appointments.

[2] He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

Temporary appointments.

[3] The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

Legislative powers.

Section 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

Section 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors. Liability to impeachment.

Article III.

Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office. Judiciary. Courts. Judges: term and compensation.

Section 2. [1] The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; — to all cases affecting Ambassadors, other public Ministers and Consuls; — to all cases of admiralty and maritime Jurisdiction; — to Controversies to which the United States shall be a party; — to Controversies between two or more States; — between a State and Citizens of another State; — between Citizens of different States — between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or subjects. Jurisdiction (cf. A. of C., Art. IX[6, 7]).

[2] In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make. Original and appellate jurisdiction of Supreme Court.

[3] The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed. Jury trial. Place of trial.

Section 3. [1] Treason against the United States, shall consist only in levying War against them, or in adhering to their Treason: definition.

Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

punishment. [2] The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

Article. IV.

NATION AND STATES. Interstate comity (cf. A. of C., Art. IV[3]).

Section 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Interstate citizenship (cf. A. of C., Art. IV[1]).

Section 2. [1] The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

Extradition of criminals. (cf. A. of C., Art. IV[2].)

[2] A Person charged in any State with Treason, Felony or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

Fugitive slaves.

[3] No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

Admission of new states (cf. A. of C., Art. XI).

Section 3. [1] New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

Government of national territory.

[2] The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Protection of states.

Section 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect

each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

Article. V.

AMENDMENT OF CONSTITUTION (cf. A. of C. Art. XIII).

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

Article. VI.

MISCELLANEOUS. Preëxisting national debt (cf. A. of C. Art. XII).

[1] All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

Supremacy of Constitution, treaties and national law.

[2] This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Oaths of national and state officials.

[3] The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

ARTICLE. VII.

Ratification.

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

Done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth IN WITNESS whereof We have hereunto subscribed our Names,

G° WASHINGTON–

Presidt. and Deputy from Virginia

[and thirty eight members from all the states except Rhode Island.]

ARTICLES IN ADDITION TO, AND AMENDMENT OF, THE CONSTITUTION OF THE UNITED STATES OF AMERICA, PROPOSED BY CONGRESS, AND RATIFIED BY THE LEGISLATURES OF THE SEVERAL STATES PURSUANT TO THE FIFTH ARTICLE OF THE ORIGINAL CONSTITUTION.

[ARTICLE I[1]]

Prohibitions on Congress respecting religion, speech, and the press.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

[ARTICLE II[1]]

Right to bear arms.

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

[ARTICLE III[1]]

Quartering of soldiers.

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

[1] First ten amendments proposed by Congress, Sept. 25, 1789. Proclaimed to be in force Dec. 15, 1791.

[Article IV[1]]

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. Right of search.

[Article V[1]]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. Protection of accused in criminal cases.

[Article VI[1]]

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence. Rights of accused regarding trial.

[Article VII[1]]

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law. Jury trial in lawsuits.

[Article VIII[1]]

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. Bail and punishment.

[Article IX[1]]

Unenumerated rights.

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

[Article X[1]]

Undelegated powers.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Article XI

Exemption of states from suit. (Proposed Sept. 5, 1794. Declared in force Jan. 8, 1798.)

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

Article XII

New method of electing President.

(To supersede part of Art. II, Sec. I, cl. 2.)

(Proposed Dec. 12, 1803. Declared in force Sept. 25, 1804.)

The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate; — The President of the Senate shall, in presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted; — The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall con-

sist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

Article XIII

Abolition of slavery. (Proposed Feb. 1, 1865. Declared in force Dec. 18, 1865.)

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

Article XIV

Citizens of the United States — protection of. (Proposed June 16, 1866. Declared in force July 28, 1868.)

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

New basis of representation in Congress.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the

(Superseding part of Art. I, sec. 2, cl. 3.)

choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Disabilities of officials engaged in rebellion.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by two-thirds vote of each House, remove such disability.

Validity of war debt.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Article XV

Voting rights of citizens of the U.S. (Proposed Feb. 27, 1869. Declared in force Mar. 30, 1870.)

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

APPENDIX C

PROMINENT NATIONAL OFFICIALS

TABLE I—THE PRESIDENTS

Name	State	Party	Electoral Vote	Years in Office
1. George Washington	Va.	(Fed.)	unanimous	1789–1793
			unanimous	1793–1797
2. John Adams	Mass.	Fed.	71 to 68	1797–1801
3. Thomas Jefferson	Va.	Dem. R.	73 to 65	1801–1805
			162 to 14	1805–1809
4. James Madison	Va.	Dem. R.	122 to 47	1809–1813
			128 to 89	1813–1817
5. James Monroe	Va.	Dem. R.	183 to 34	1817–1821
			231 to 1	1821–1825
6. John Q. Adams	Mass.	Dem. R.	84 out of 261	1825–1829
7. Andrew Jackson	Tenn.	Dem.	178 to 83	1829–1833
			219 to 49	1833–1837
8. Martin Van Buren	N.Y.	Dem.	170 to 73	1837–1841
9. Wm. H. Harrison	Ohio	Whig	234 to 60	1841–1841
10. John Tyler [1]	Va.	(Whig)		1841–1845
11. James K. Polk	Tenn.	Dem.	170 to 105	1845–1849
12. Zachary Taylor	La.	Whig	163 to 127	1849–1850
13. Millard Fillmore [1]	N.Y.	Whig		1850–1853
14. Franklin Pierce	N.H.	Dem.	254 to 42	1853–1857
15. James Buchanan	Pa.	Dem.	174 to 114	1857–1861
16. Abraham Lincoln	Ill.	Rep.	180 to 123	1861–1865
			212 to 21	1865–1865
17. Andrew Johnson [1]	Tenn.	(Rep.)		1865–1869
18. Ulysses S. Grant	Ill.	Rep.	214 to 80	1869–1873
			286 to 63	1873–1877
19. Rutherford B. Hayes	Ohio	Rep.	185 to 184	1877–1881
20. James A. Garfield	Ohio	Rep.	214 to 155	1881–1881
21. Chester A. Arthur [1]	N.Y.	Rep.		1881–1885
22. Grover Cleveland	N.Y.	Dem.	219 to 182	1885–1889
23. Benjamin Harrison	Ind.	Rep.	233 to 168	1889–1893
24. Grover Cleveland	N.Y.	Dem.	277 to 167	1893–1897
25. William McKinley	Ohio	Rep.	271 to 176	1897–1901
			292 to 155	1901–1901
26. Theodore Roosevelt [1]	N.Y.	Rep.		1901–1905
			336 to 140	1905–1909
27. William H. Taft	Ohio	Rep.	321 to 162	1909–

[1] Raised from the vice-presidency.

TABLE II — CHIEF JUSTICES OF THE SUPREME COURT

Name	State	Years in Office
1. John Jay	New York	1789–1795
2. John Rutledge	South Carolina	1795–1795
3. Oliver Ellsworth	Connecticut	1796–1800
4. John Marshall	Virginia	1801–1835
5. Roger B. Taney	Maryland	1836–1864
6. Salmon P. Chase	Ohio	1864–1873
7. Morrison R. Waite	Ohio	1874–1888
8. Melville W. Fuller	Illinois	1888–1910
9. Edward D. White	Louisiana	1910–

TABLE III — SPEAKERS OF THE HOUSE SINCE 1861

Name	Congress	State	Party	Years in Office
1. Galusha A. Grow	37	Pa.	Rep.	1861–1863
2. Schuyler Colfax	38–40	Ind.	Rep.	1863–1869
3. James G. Blaine	41–43	Me.	Rep.	1869–1875
4. Michael C. Kerr	44	Ind.	Dem.	1875–1876
5. Samuel J. Randall	44–46	Pa.	Dem.	1876–1881
6. John W. Keifer	47	Ohio	Rep.	1881–1883
7. John G. Carlisle	48–50	Ky.	Dem.	1883–1889
8. Thomas B. Reed	51	Me.	Rep.	1889–1891
9. Charles F. Crisp	52–53	Ga.	Dem.	1891–1895
10. Thomas B. Reed	54–55	Me.	Rep.	1895–1899
11. David B. Henderson	56–57	Ia.	Rep.	1899–1903
12. Joseph G. Cannon	58–61	Ill.	Rep.	1903–1911
13. Champ Clark	62–	Mo.	Dem.	1911–

APPENDIX D

THE STATES—AREA AND POPULATION

State	Became Member of Union	Area Square Miles	Population		Electoral Vote	
			1910	1900	1910	1900
Alabama	1819	52,250	2,138,093	1,828,697		11
Arkansas	1836	53,880	1,574,440	1,311,564		9
California	1850	158,360	2,377,549	1,485,053		10
Colorado	1876	103,925	799,024	539,700		5
Connecticut	1788	4,990	1,114,756	908,355		7
Delaware	1787	2,050	202,322	184,735		3
Florida	1845	58,680	752,619	528,542		5
Georgia	1788	59,475	2,609,121	2,216,331		13
Idaho	1890	84,800	325,594	161,772		3
Illinois	1818	56,650	5,638,591	4,821,550		27
Indiana	1816	36,350	2,700,876	2,516,462		15
Iowa	1846	56,025	2,224,771	2,231,853		13
Kansas	1861	82,080	1,690,949	1,470,495		10
Kentucky	1792	40,400	2,289,905	2,147,174		13
Louisiana	1812	48,720	1,656,388	1,381,625		9
Maine	1820	33,040	742,371	694,466		6
Maryland	1788	12,210	1,295,346	1,190,050		8
Massachusetts	1788	8,315	3,366,416	2,805,346		16
Michigan	1837	48,915	2,810,173	2,420,982		14
Minnesota	1858	83,365	2,075,708	1,751,394		11
Mississippi	1817	46,810	1,797,114	1,551,270		10
Missouri	1821	69,415	3,293,335	3,106,665		18
Montana	1889	146,080	376,053	243,329		3
Nebraska	1867	77,510	1,192,214	1,068,539		8
Nevada	1864	110,700	81,875	42,335		3
New Hampshire	1788	9,305	430,572	411,588		4
New Jersey	1787	7,815	2,537,167	1,883,669		12
New York	1788	49,170	9,113,614	7,268,012		39
North Carolina	1789	52,250	2,206,287	1,893,810		12
North Dakota	1889	70,795	577,056	319,146		4
Ohio	1803	41,060	4,767,121	4,157,545		23

THE STATES — AREA AND POPULATION — *Continued*

State	Became Member of Union	Area Square Miles	Population		Electoral Vote	
			1910	1900	1910	1900
Oklahoma	1907	70,430	1,657,155	790,205		7
Oregon	1859	96,030	672,765	413,536		4
Pennsylvania	1787	45,215	7,665,111	6,302,115		34
Rhode Island	1790	1,250	542,610	428,556		4
South Carolina	1788	30,570	1,515,400	1,340,316		9
South Dakota	1889	77,650	583,888	401,570		4
Tennessee	1796	42,050	2,184,789	2,020,616		12
Texas	1845	265,780	3,896,542	3,048,710		18
Utah	1896	84,970	373,351	276,749		3
Vermont	1791	9,565	355,956	343,641		4
Virginia	1788	42,450	2,061,612	1,854,184		12
Washington	1889	69,180	1,141,990	518,103		5
West Virginia	1863	24,780	1,221,119	958,800		7
Wisconsin	1848	56,040	2,333,860	2,069,042		13
Wyoming	1890	79,890	145,965	92,531		3
Total States	——	1,876,840	91,641,197	74,928,764		483

Territory	Area Square Miles	Population	
		1900	1910
District of Columbia	70	278,718	331,069
Alaska	577,390	63,441	64,356
Arizona	113,020	122,931	204,354
Hawaii	6,740	154,001	191,909
New Mexico	122,580	195,310	327,301
Porto Rico	3,600	957,679	1,118,012
Philippines	114,000	7,000,000	——

APPENDIX E

THE STATE CONSTITUTIONS

TABLE I—METHOD OF ADOPTION (1776–1911)

State	Without Popular Ratification				With Popular Ratification			
	1776–1815	1815–1845	1845–1870	1870–1911	1776–1815	1815–1845	1845–1870	1870–1911
Maine	.....	.....	.....	.....	.....	1820	.....	(1875)
New Hampshire	1776	.....	.....	.....	1784 1792	.....	.....	1903
Vermont	1786 1793	.....	.....	.....	.....	.....	.....	.....
Massachusetts	.....	.....	.....	.....	1780	.....	.....	.....
Rhode Island	.....	.....	.....	.....	.....	1842	.....	.....
Connecticut	.....	.....	.....	.....	.....	1818	.....	.....
New York	1777	.....	.....	.....	.....	1821	1846	1894
New Jersey	1776	.....	.....	.....	.....	1844	.....	(1875)
Pennsylvania	1776 1790	.....	.....	.....	.....	1838	.....	1873
Delaware	1776 1792	1831	.....	1897	.....	.....	.....	.....
Maryland	1776	.....	.....	.....	.....	.....	1851 1864 1867	.....
West Virginia	.....	.....	.....	.....	.....	.....	1862	1872
Virginia	1776	.....	.....	1902	.....	1829	1850 1869	.....
North Carolina	1776	.....	.....	.....	.....	.....	1868	1875
South Carolina	1776 1778 1790	.....	1865	1895	.....	.....	1868	.....
Georgia	1777 1789 1798	.....	.....	.....	.....	.....	1865 1868	1877
Florida	.....	1845	1865	.....	.....	.....	1868	1886
Alabama	.....	1819	1865	.....	.....	.....	1867	1875
Mississippi	.....	1817	.....	1890	.....	1832	1868	1901

THE STATE CONSTITUTIONS. — *Continued*

State	Without Popular Ratification				With Popular Ratification			
	1777–1815	1815–1845	1845–1870	1870–1911	1776–1815	1815–1845	1845–1870	1870–1911
Louisiana	1812	.....	.....	1898	.....	1845	1852 1868	.....
Texas	.....	.....	.....	.....	.....	1845	1866 1868	1875
Arkansas	.....	1836	.....	.....	.....	.....	1864 1868	1874
Tennessee	1796	.....	.....	.....	.....	1834	1870	.....
Kentucky	1792 1799	.....	.....	.....	.....	.....	1850	1891
Ohio	1802	.....	.....	.....	.....	.....	1851	.....
Indiana	.....	1816	.....	.....	.....	.....	1851	.....
Illinois	.....	1818	.....	.....	.....	.....	1848 1870	.....
Michigan	.....	.....	.....	.....	.....	1837	1850	.....
Wisconsin	.....	.....	.....	.....	.....	.....	1848	.....
Minnesota	.....	.....	.....	.....	.....	.....	1857	.....
Iowa	.....	.....	.....	.....	.....	.....	1846 1857	.....
Missouri	.....	1820	.....	.....	.....	.....	1865	1875
Kansas	.....	.....	.....	.....	.....	.....	1859	.....
Nebraska	.....	.....	.....	.....	.....	.....	1867	1875
South Dakota	.....	.....	.....	.....	.....	.....	.....	1889
North Dakota	.....	.....	.....	.....	.....	.....	.....	1889
Montana	.....	.....	.....	.....	.....	.....	.....	1889
Wyoming	.....	.....	.....	.....	.....	.....	.....	1889
Colorado	.....	.....	.....	.....	.....	.....	.....	1876
Utah	.....	.....	.....	.....	.....	.....	.....	1895
Nevada	.....	.....	.....	.....	.....	.....	1864	.....
Idaho	.....	.....	.....	.....	.....	.....	.....	1889
Washington	.....	.....	.....	.....	.....	.....	.....	1889
Oregon	.....	.....	.....	.....	.....	.....	1857	.....
California	.....	.....	.....	.....	.....	.....	1849	1879
Oklahoma	.....	.....	.....	.....	.....	.....	.....	1907

The dates given above are the years in which the constitutions were adopted, and not the ones in which they went into force.

TABLE II—AMENDMENT AND REVISION OF STATE CONSTITUTIONS (1911)

State	Present Constitution		Constitutional method of amendment	General revision of present constitution
	Date of adoption	Method of adoption		
Maine	1875	Const. of 1819 amended, and re-arranged by chief justice and leg.	(1) ⅔ members each house. (2) Majority of voters.	Convention called by ⅔ leg.
New Hampshire	1792	(1) Prop. by convention. (2) Rat. by ⅔ voters. (3) Revised by 2d conv.		(1) Electors vote on convention every 7 yrs. (2) Rat. by ⅔ voters.
Vermont	1793	(1) Adopted by convention called by censors. (2) Amends. 1–26 same way. (3) Later amends. by leg. and voters.	(1) ⅔ Senate prop. (1900 and every 10 yrs. after). (2) Maj. of H. of R. (3) Maj. of next leg. (4) Maj. of voters.	
Massachusetts	1780	(1) Prop. by convention. (2) Rat. by ⅔ voters. Amends. 1–9 by conv. and voters (1819). Amends. 10–36 by leg. and voters.	(1) Maj. of senators and ⅔ reps. present. (2) Same votes in next leg. (3) Maj. of voters.	
Rhode Island	1842	(1) Prop. by convention. (2) Rat. by maj. voters.	(1) Maj. members of each house. (2) Maj. each house of next leg. (3) ⅜ of voters.	
Connecticut	1818	(1) Prop. by convention. (2) Rat. by maj. voters.	(1) Maj. of H. of R. prop. (2) ⅔ each house next leg. (3) Maj. of voters.	

New York	1894	(1) Prop. by convention. (2) Rat. by maj. voters.	(1) Maj. el. to each house. (2) Maj. el. to each house next leg. (if new Senate). (3) Maj. of voters.	Electors vote on convention 1916 and every 20 yrs. after.
New Jersey	1844	(1) Prop. by convention. (2) Rat. by maj. voters.	(1) Maj. el. to each house. (2) Maj. el. next leg. (3) Maj. voters.	
Pennsylvania	1873	(1) Prop. by convention. (2) Rat. by maj. voters.	(1) Maj. el. to each house. (2) Maj. el. next leg. (3) Maj. of voters (not oftener than every 5 yrs.).	
Delaware	1897	Adopted by convention.	(1) ⅔ el. to each house. (2) ⅔ el. next leg.	Convention called by ⅔ leg. and maj. voters.
Maryland	1867	(1) Prop. by convention. (2) Rat. by maj. voters.	(1) ⅗ el. to each house. (2) Maj. of voters.	Electors vote on convention every 20 yrs.
West Virginia	1872	(1) Prop. by convention. (2) Rat. by maj. voters.	(1) ⅔ el. to each house. (2) Maj. of voters.	(1) Convention called by maj. el. to leg. and maj. voters. (2) Rat. by maj. voters.
Virginia	1902	Adopted by convention.	(1) Maj. el. to each house. (2) Maj. el. next leg. (3) Maj. of voters.	Electors vote on convention at least every 20 yrs.
North Carolina	1875	(1) Prop. by convention. (2) Rat. by maj. voters.	(1) ⅗ of each house. (2) Maj. of voters.	Convention called by ⅔ of each house and maj. voters.
South Carolina	1895	Adopted by convention.	(1) ⅔ el. to each house. (2) Maj. of voters. (3) Maj. each house next leg.	Convention called by ⅔ el. to each house and maj. voters.

ABBREVIATIONS. Prop. = proposed; rat. = ratified; maj. = majority; el. = elected; leg. = legislature; maj. voters = majority of votes actually cast.

TABLE II—AMENDMENT AND REVISION OF STATE CONSTITUTIONS (1911).—*Continued*

State	Present Constitution		Constitutional method of amendment	General revision of present constitution
	Date of adoption	Method of adoption		
Georgia	1877	(1) Prop. by convention. (2) Rat. by maj. voters.	(1) ⅔ el. to each house. (2) Maj. voters.	Convention called by ⅔ el. to each house and maj. voters.
Florida	1885	Adopted by convention.	(1) ⅗ el. to each house. (2) Maj. voters.	Convention called by ⅔ el. to each house and maj. voters.
Alabama	1901	(1) Prop. by convention. (2) Rat. by maj. voters.	(1) ⅗ of each house. (2) Maj. of all votes cast.	Convention called by leg. and maj. voters.
Mississippi	1890	Adopted by convention.	(1) ⅔ of each house. (2) Maj. of voters.	Convention called by maj. leg. and maj. voters.
Louisiana	1898	Adopted by convention.	(1) ⅔ el. to each house. (2) Maj. of voters.	
Texas	1875	(1) Prop. by convention. (2) Rat. by maj. voters.	(1) ⅔ el. to each house. (2) Maj. voters.	
Arkansas	1874	(1) Prop. by convention. (2) Rat. by maj. vote.	(1) Initiative or maj. el. to each house. (2) Maj. voters (not more than 3 at once.)	
Tennessee	1870	(1) Prop. by convention. (2) Rat. by maj. vote.	(1) Maj. el. to each house. (2) ⅔ el. next leg. (3) Maj. voters (not more than 6 at once).	Convention called by maj. of leg.
Kentucky	1891	(1) Prop. by convention. (2) Rat. by maj. vote.	(1) ⅗ el. to each house. (2) Maj. voters.	(1) Convention called by maj. of leg. and maj. of voters. (2) Const. rat. by maj. voters.

Ohio	1851	(1) Prop. by convention. (2) Rat. by maj. voters.	(1) 3/5 el. to each house. (2) Maj. voters.	Convention called by 3/5 el. to leg. and maj. voters. Electors vote on convention 1911 and every 20 yrs. after.
Indiana	1851	(1) Prop. by convention. (2) Rat. by maj. voters.	(1) Maj. el. to each house. (2) Maj. el. to next leg. (3) Maj. voters.	
Illinois	1870	(1) Prop. by convention. (2) Rat. by maj. voters.	(1) 2/3 el. to each house. (2) Maj. voters.	Convention called by 2/3 members leg. and maj. voters.
Michigan	1850	(1) Prop. by convention. (2) Rat. by maj. voters.	(1) Initiative (20%) and leg. or 2/3 el. to each house. (2) Maj. voters.	Convention called by leg. and maj. voters. Electors vote on convention 1924 and every 16 yrs. after.
Wisconsin	1848	(1) Prop. by convention. (2) Rat. by maj. voters.	(1) Maj. of each house. (2) Maj. in next leg. (3) Maj. voters.	Convention called by maj. of leg. and maj. voters.
Minnesota	1857	(1) Prop. by convention. (2) Rat. by maj. voters.	(1) Maj. of each house. (2) Maj. of voters.	Convention called by 2/3 el. to leg. and maj. voters.
Iowa	1857	(1) Prop. by convention. (2) Rat. by maj. voters.	(1) Maj. el. to each house. (2) Maj. el. to next leg. (3) Maj. voters.	Convention called by leg. and maj. voters. Electors vote on convention 1910 and every 10 yrs. after.
Missouri	1875	(1) Prop. by convention. (2) Rat. by maj. voters.	(1) Initiative (8% or 2/3 Cong. Dist.) or maj. el. to each house. (2) Maj. of all voters in state.	(1) Convention called by maj. el. to leg. and maj. voters. (2) Const. rat. by maj. voters.
Kansas	1859	(1) Prop. by convention. (2) Rat. by maj. voters.	(1) 2/3 el. to each house. (2) Maj. voters.	Convention called by 2/3 el. to leg. and maj. voters.

ABBREVIATIONS. Prop. = proposed; rat. = ratified; maj. = majority; el. = elected; leg. = legislature; maj. voters = majority of votes actually cast.

TABLE II — AMENDMENT AND REVISION OF STATE CONSTITUTIONS (1911). — *Continued*

State	Present Constitution		Constitutional method of amendment	General revision of present constitution
	Date of adoption	Method of adoption		
Nebraska	1875	(1) Prop. by convention. (2) Rat. by maj. voters.	(1) ⅔ el. to each house. (2) Maj. voters.	(1) Convention called by ⅗ el. to leg. and maj. voters. (2) Const. rat. by maj. voters.
South Dakota	1889	(1) Prop. by convention. (2) Rat. by maj. voters.	(1) Maj. el. to each house. (2) Maj. voters.	Convention called by ⅔ el. to leg. and maj. voters.
North Dakota	1889	(1) Prop. by convention. (2) Rat. by maj. voters.	(1) Maj. el. to each house. (2) Maj. el. to next leg. (3) Maj. voters.	
Montana	1889	(1) Prop. by convention. (2) Rat. by maj. voters.	(1) ⅔ el. to each house. (2) Maj. voters (not more than 3 at a time).	(1) Convention called by ⅔ el. to leg. and maj. voters. (2) Const. rat. by maj. voters.
Wyoming	1889	(1) Prop. by convention. (2) Rat. by maj. voters.	(1) ⅔ el. to each house. (2) Maj. of all voters in state.	(1) Convention called by ⅔ el. to leg. and maj. voters. (2) Const. rat. by maj. voters.
Colorado	1876	(1) Prop. by convention. (2) Rat. by maj. voters.	(1) ⅔ el. to each house. (2) Maj. voters.	(1) Convention called by ⅔ el. to leg. and maj. voters. (2) Const. rat. by maj. voters.
Utah	1895	(1) Prop. by convention. (2) Rat. by maj. voters.	(1) ⅔ el. to each house. (2) Maj. voters.	(1) Convention called by ⅔ el. to leg. and maj. voters. (2) Const. rat. by maj. voters.
Nevada	1864	(1) Prop. by convention. (2) Rat. by maj. voters.	(1) Maj. el. to each house. (2) Maj. el. to next leg. (3) Maj. voters.	Convention called by ⅔ el. to leg. and maj. voters.

Idaho	1889	(1) Prop. by convention. (2) Rat. by maj. voters.	(1) ⅔ el. to each house. (2) Maj. voters.	(1) Convention called by ⅔ el. to leg. and maj. voters. (2) Const. rat. by maj. voters.
Washington	1889	(1) Prop. by convention. (2) Rat. by maj. voters.	(1) ⅔ el. to each house. (2) Maj. voters.	(1) Convention called by ⅔ el. to leg. and maj. voters. (2) Const. rat. by maj. voters.
Oregon	1857	(1) Prop. by convention. (2) Rat. by maj. voters.	(1) Maj. el. to each house. (2) Maj. el. to next leg. (3) Maj. voters.	
California	1879	(1) Prop. by convention. (2) Rat. by maj. voters.	(1) ⅔ el. to each house. (2) Maj. voters.	(1) Convention called by ⅔ el. to leg. and maj. voters. (2) Const. rat. by maj. voters.
Oklahoma	1907	(1) Prop. by convention. (2) Rat. by maj. voters.	(1) Initiative (15%) or maj. of each house. (2) Maj. of votes cast.	(1) Convention called by maj. leg. and maj. voters. (2) Const. rat. by maj. voters.

ABBREVIATIONS. Prop. = proposed; rat. = ratified; maj. = majority; el. = elected; leg. = legislature; maj. voters = majority of votes actually cast.

APPENDIX F

THE SUFFRAGE

TABLE I—CHANGES IN THE SUFFRAGE[1] (1619–1911)

State	1619–1775[2]	1775–1815	1815–1845[3]	1845–1870	1870–1900[4]
Maine			Citizen (1819).		
New Hampshire	Freehold £40 per yr. or £50 personal estate (1691).	Freehold-poll tax (1784). Freehold (1792).			
Vermont		Freemen (1786). Residents (1 yr.) (1797).	Freeman or citizen (1828).		
Massachusetts	Puritans (1631). Church members (1662). Freeholders 40 *s.* per yr. or £40 other estate. No Quakers (1691).	Freehold of £60 or £3 per yr. (1780). Freehold-poll tax (1786).	White taxpayers (1822).	Ability to read Const. (1857).	
Rhode Island	Men of competent estate (1665). Estate of £100 or 40 *s.* per yr. (1723). Estate of £400 or £20 per yr. and eldest son (1740).	Freehold £40 or 40 *s.* per yr. (1776).	Freehold $134 or $7 rental (1842).		Citizen (1888).
Connecticut	Personal estate £30 (XVII. cent.). Per. estate £40 or 40 *s.* per yr. (1715).		Freeman (1818). White citizen (1845).	Ability to read Const. (1855).	Ability to read in Eng. (1897).

New York	Estate £40 or 40 *s.* per yr. (1683).	Freehold £ 20 or 40 *s.* rental or freeman N. Y. city or Albany (1777).	Taxpayers or residents (3 yrs.). Negroes with $250 estate (1821). Citizens (blacks still as above) (1826).		
New Jersey	Fifty acres land (1683).	Freehold £50 proclamation money (1776). Only whites after (1807).	White citizens (1844).		
Pennsylvania	Fifty acres land or £50 lawful money (1696).	Freeman taxpayers and sons (1776).	White taxpayers (1838) (same as at present except for color).		
Delaware	Fifty acres or £40 personal estate (1722).	Freeholders (1776). Taxpayers (1792).	White citizen taxpayers (1831).		
Maryland	Fifty acres land (1678).	Fifty acres or £30 property (1776). White citizens (1810).			
West Virginia				White citizen (1862).	
Virginia	Inhabitants (1621). Freeholders (1670). Estate 25 acres settled or 100 acres unsettled (1736). Only whites after (1763).	Poll tax of 10 *s.* (1781).	Estate $25 or 2 yrs.' residence. White person (1829).	Freeman (2 yrs.) (1850). White citizen (1864).	Veteran or son, or taxpayer, or ability to read (1902).
North Carolina	Freehold 50 acres (1669). Only whites after (1723).	Taxpayers (1776).	Freemen excepting negroes (1835).	White citizen taxpayer (1854). Inhabitant (1868) (1 yr.).	Inhabitant able to read and write (1 yr.) (1900).
South Carolina	Freehold 50 acres (1704) or 20 *s.* tax (1721). Freehold 100 acres or 10 *s.* tax (1759). Only whites after (1716).	Belief in God and freehold 50 acres or tax equal to that (1778). White freemen (1810).		White inhabitant (1865). Citizen (1868).	Citizen able to read and write, or owning property assessed at $300 (1895).

TABLE I — CHANGES IN THE SUFFRAGE (1619–1911). — *Continued*

State	1619–1775[2]	1775–1815	1815–1845[3]	1845–1870	1870–1900[4]
Georgia	White freeholder, 50 acres (1761).	White property owner £10 (1777). Taxpayer (1789).		White citizen taxpayer (1865).	Veterans or citizens who can read or assessed for $500 (1908).
Florida			White citizen (2 yrs.) (1845).	White citizen (1865). Inhabitant (1 yr.) (1868).	Citizen (1894).
Alabama			Citizen (1819), white.	White citizen (1865). Inhabitant (6 mo.) (1867).	Veterans or citizens able to read or assessed for $300 (1901).
Mississippi			White citizen or taxpayer (1817). White citizen (1832).	Citizen (1868).	Citizen able to read Const. (1890).
Louisiana		White freeholder or taxpayer (1812).	White citizen (1845) (2 yrs.).	Citizen (1868).	Citizen able to read and write, or owning property assessed at $300 (1898).
Oklahoma					Citizens able to read and write (1907).

State	1775–1815	1815–1845	1845–1870	1870–1900
Texas			White citizens (1866). Inhabitants (1868).	Citizens (1875).
Arkansas		White citizen (1836).	Inhabitant (6 mo.) (1868).	Inhabitant (1 yr.) (1874).
Tennessee	Freeman (6 mo.) (1796).	White citizen (1834).		
Kentucky	Free white citizen (1799).		White citizen (2 yrs.) (1850).	
Ohio	Taxpayer (1802).		White citizen (1850).	
Indiana		White citizen (2 yrs.) (1816).	Inhabitant (6 mo.) (1 yr. in U.S.) (1851).	
Illinois		White resident (6 mo.) (1818).	White citizen (1848).	
Michigan		White citizens (1835).	Inhabitants (6 mo.) or residents (2 yrs. 6 mo.) (1850).	Citizens or aliens declared int. before 1892 (1894).
Wisconsin			White or red inhabitants (1 yr.) (1848).	
Minnesota			Citizens, white or red (1857).	
Iowa			White citizen (1846).	
Missouri		White citizen (1820).	White inhabitant (1 yr.) (1865).	
Kansas			White inhabitant (6 mo.) (1859).	
Nebraska			White inhabitant (6 mo.) (1867)	

State	1775–1815	1815–1845	1845–1870	1870–1900
South Dakota				Inhabitant (6 mo.) (1889).
North Dakota				Inhabitant (6 mo.) (1889).
Montana				Citizen (1889).
Wyoming				*All* citizens who can read constitution (1889).
Colorado				Inhabitants (6 mo.) (1876). *All* inhabitants who have declared int. 4 mo. (1893).
Utah				*All* citizens (1895).
Nevada			White citizen (1864).	
Idaho				Citizens (1889). *All* citizens (1896).
Washington				Citizen (1889).
Oregon			Inhabitant (6 mo.) (declared int. 1 yr.) (1857).	
California			White citizen (1849).	Ability to read or write (1894).

[1] By the Fifteenth Amendment to the national Constitution, adopted in 1870, the word *white* was practically stricken from the state constitutions that contained it.

[2] Only a few typical changes of the colonial period have been noted. For further details consult Bishop, *Elections in the Colonies*.

[3] The word *inhabitant* is used to denote citizens or aliens who have declared their intention of becoming citizens. The word *resident* shows that citizenship or declaration is not required. The period of time in parenthesis refers to length of residence required; in the case of citizens, it is given only when longer than one year.

[4] Unless the word *all* is used, only males are permitted to vote. The universal age requirement is 21.

[5] Greatly altered in Constitution of 1901.

TABLE II—QUALIFICATIONS OF VOTERS (1911)

State	Citizenship[1]	Residence in			Other Qualifications	Persons Excluded[4]
		State	County	Precinct		
Maine	Citizen.	3 mo.	3 mo.	3 mo.[2]	Read Constitution in English or write name.	Paupers, persons under guardianship, Indians not taxed, U. S. soldiers and sailors in service.
New Hampshire	Citizen.	6 mo.	6 mo.	6 mo.[2]		Paupers.
Vermont	Citizen.	1 yr.		30 da.		Unpardoned convicts.
Massachusetts	Citizen.	1 yr.	6 mo.	6 mo.[2]	Read Constitution in English or write name.	Paupers, persons under guardianship.
Rhode Island	Citizen.	2 yr.[3] or 1 yr.	6 mo.	6 mo.[2]	Must own property worth $134 or pay rental of $7 a yr. to vote for city councillors or on finance.	Paupers, lunatics, incompetents or Indians, persons convicted of bribery or felony (unrestored), U. S. soldiers and sailors in service.
Connecticut	Citizen.	1 yr.	6 mo.	6 mo.[2]	Read Constitution or statutes in English.	Unpardoned convicts.
New York	Citizen for 90 da.	1 yr.	4 mo.	30 da.		Persons guilty of crime against suffrage, unpardoned convicts, U. S. soldiers and sailors in service.
New Jersey	Citizen.	1 yr.	5 mo.			Paupers, idiots, lunatics, unpardoned convicts, U. S. soldiers and sailors in service.
Pennsylvania	Citizen for 1 mo.	1 yr.			Paid state or county tax if 22 or over.	Persons guilty of crime against suffrage, U. S. soldiers and sailors in service.

TABLE II — QUALIFICATION OF VOTERS (1911). — *Continued*

State	Citizenship[1]	Residence in			Other Qualifications	Persons Excluded[4]
		State	County	Precinct		
Delaware	Citizen.	1 yr.	3 mo.	30 da.	Read Constitution in English or write name (after 1900).	Idiots, lunatics, paupers, felons, U. S. soldiers and sailors in service.
Maryland	Citizen.	1 yr.	6 mo.			Lunatics, idiots, and unpardoned convicts.
West Virginia	Citizen.	1 yr.	60 da.			Lunatics, idiots, paupers, persons convicted of treason, felony, or bribery, unpardoned, U. S. soldiers and sailors.
Virginia	Citizen.	1 yr.	3 mo.			Idiots, lunatics, unpardoned convicts, duellists.
North Carolina	Citizen.	2 yr.	90 da.		Read Constitution in English or write name (unless person or ancestor voted before Jan. 1, 1867).	Unrestored convicts.
South Carolina	Citizen.	2 yr.	1 yr.	4 mo.	Read or understand Constitution and write same, or own property assessed at $300, paid poll tax.	Paupers, idiots, and lunatics, unpardoned convicts, persons in public institutions, U. S. sailors and soldiers in service.
Georgia	Citizen.	1 yr.	6 mo.		Paid taxes except for current year.	Unpardoned convicts and embezzlers, idiots, lunatics, U. S. soldiers and sailors in service.
Florida	Citizen.	1 yr.	6 mo.			Idiots, lunatics, unpardoned convicts.
Alabama	Citizen, or alien who has declared intention.	1 yr.	3 mo.	30 da.	[New qualifications of 1901, see p. 426.]	Idiots, lunatics, unpardoned convicts, U. S. soldiers and sailors in service.

Mississippi	Citizen.	2 yr.		1 yr.	Paid taxes for 2 yr. previous, read or understand Constitution.	Idiots, lunatics, convicts.
Louisiana	Citizen.	2 yr.	1 yr.	6 mo.	Read and write, or own property assessed at $300 (unless person or ancestor voted before Jan. 1, 1867).	Idiots, lunatics, paupers, unrestored convicts.
Texas	Citizen, or alien who has declared intention 6 mo.	1 yr.	6 mo.			Paupers, idiots, lunatics, unrestored convicts, U. S. soldiers and sailors.
Arkansas	Citizen, or alien who has declared intention.	1 yr.	6 mo.	30 da.	Paid poll tax.	Idiots, lunatics, unpardoned convicts, U. S. soldiers and sailors in service.
Tennessee	Citizen.	1 yr.	6 mo.		Paid poll tax.	Bribers and convicts (unpardoned).
Kentucky	Citizen.	1 yr.	6 mo.	60 da.		Unpardoned convicts.
Ohio	Citizen.	1 yr.	30 da.	20 da.		Idiots, lunatics, unpardoned convicts, U. S. soldiers and sailors.
Indiana	Citizen, or alien declared intention, if resident of U. S. 1 yr.	1 yr.	2 mo.	30 da.		Unpardoned convicts, U. S. soldiers and sailors in service.
Illinois	Citizen.	1 yr.	90 da.	30 da.		Convicts, U. S. soldiers and sailors in service.
Michigan	Citizen, non-tribal Indian, alien declaring intention before May 8, 1892.	6 mo.	20 da.	20 da.		Duellists, U. S. soldiers and sailors in service.
Wisconsin	Citizen, non-tribal Indian, alien who has declared intention.	1 yr.		10 da.		Idiots, lunatics, unpardoned convicts, U. S. soldiers or sailors in service.
Minnesota	Citizen for 3 mo., non-tribal Indian.	6 mo.		30 da.		Idiots, lunatics, unpardoned convicts, U. S. soldiers or sailors in service.

TABLE II — QUALIFICATION OF VOTERS (1911). — *Continued*

State	Citizenship[1]	Residence in			Other Qualifications	Persons Excluded[4]
		State	County	Precinct		
Iowa	Citizen.	6 mo.	60 da.	10 da.		Idiots, lunatics, unpardoned convicts, U. S. soldiers and sailors in service.
Missouri	Citizen, alien who has declared intention 1 yr. previous.	1 yr.	60 da.	60 da.		Unpardoned convicts, inmates of public institutions, U. S. soldiers and sailors in service.
Kansas	Citizen, alien who has declared intention.	6 mo.		30 da.		Idiots, lunatics, unpardoned convicts, deserters, U. S. soldiers or sailors in service.
Nebraska	Citizen, alien who has declared intention 30 da.	6 mo.	40 da.	10 da.		Idiots, lunatics, unpardoned convicts, U. S. soldiers or sailors in service.
South Dakota	Citizen, non-tribal Indian, alien who has declared intention.	6 mo.	30 da.	10 da.		Idiots, lunatics, persons under guardianship, unpardoned convicts, U. S. soldiers and sailors in service.
North Dakota	Citizen, alien who has declared intention, non-tribal Indian 2 yr. off reservation.	1 yr.	6 mo.	90 da.		Lunatics, incompetents, unpardoned convicts, U. S. soldiers and sailors in service.
Montana	Citizen.	1 yr.	30 da.	30 da.		Idiots, lunatics, unpardoned convicts, inmates of public institutions, U. S. soldiers or sailors in service.
Wyoming	Citizen (male or female).	1 yr.	60 da.	10 da.	Read Constitution.	Idiots, lunatics, unpardoned convicts, U. S. soldiers and sailors in service.

Colorado	Citizen (male or female), alien (m. or f.) declared intention 4 mo.	6 mo.	90 da.	10 da.		Idiots, lunatics, incompetents, unpardoned convicts.
Utah	Citizen (male or female) 90 da.	1 yr.	4 mo.	60 da.		Idiots, lunatics, unpardoned persons convicted of treason or crime against suffrage.
Nevada	Citizen.	6 mo.	30 da.	30 da.		Idiots, lunatics, unpardoned convicts, natives of China, U. S. soldiers and sailors in service.
Idaho	Citizen (male or female).	6 mo.	30 da.	10 da.		Idiots, lunatics, incompetents, unpardoned convicts and bribers, bigamists, natives of China, tribal Indians not taxed, U. S. soldiers and sailors in service.
Washington	Citizen, or voter before 1889.	1 yr.	90 da.	30 da.		Idiots, lunatics, unpardoned convicts, Indians not taxed, U. S. soldiers or sailors in service.
Oregon	Citizen, or alien declared intention 1 yr.	6 mo.				Idiots, lunatics, convicts, natives of China, U. S. soldiers and sailors in service.
California	Citizen for 90 da.	1 yr.	3 mo.	30 da.	Read Constitution in English and write name.	Idiots, lunatics, convicts, natives of China, U. S. soldiers and sailors in service.
Oklahoma	Citizen.	1 yr.	6 mo.	30 da.	Read and write state constitution.	Persons mentally incompetent, paupers, unpardoned convicts, and U. S. soldiers or sailors in service.

[1] All voters are males over 21 unless otherwise designated. [2] Residence in town.

[3] Residence of 2 years unless an owner of property worth $134.

[4] The term *convict* refers to a person convicted of a serious crime who may have served out his term. Felony, treason, embezzlement, and bribery are the crimes most frequently mentioned, though in some states, as Virginia, minor offences like petit larceny may be included. Voters absent in service of the United States are expressly declared in most states to neither gain residence nor lose it.

APPENDIX G

THE STATE GOVERNMENTS

TABLE I — STATE GOVERNMENTS OF THE REVOLUTION

State	Legislature				Governor					Highest Court	
	Sessions	Term (yrs.) Upper House	Term (yrs.) Lower House	Veto	Qualifications	Term in years	Reëligibility	Chosen by	Executive Council of	Term	Chosen by
New Hampshire (1784)	An.	1	1	No	Age, 30 yrs. Residence, 7 yrs. Property, £500. Protestant.	1		Voters.[1]	Five.	Good behavior.	President and executive council.
Massachusetts (1780)	An.	1	1	Yes $\frac{2}{3}$	Residence, 7 yrs. Estate £1000. Christian.	1		Voters.[1]	Nine.	Good behavior.	Governor and executive council.
Rhode Island (1776)	An.	1	1	No		1		Voters.[1]		1 yr.	Legislature.
Connecticut (1776)	An.	1[4]	1	No		1		Voters.[1]		1 yr.	Legislature.
New York (1777)	An.	4[4, 6]	1	No	"Wise and discreet freeholder."	3		Voters.[1]	Governor and four senators.	Good behavior.	Executive council.

New Jersey (1776)	An.	1	1	No	"Fit person"	1½		Legislature.		7 yrs.	Legislature.
Pennsylvania (1776)	An.		1	No	Belief in God and divine authority of Scriptures.	1[2]	After 3 terms not reëligible for 4 yrs.	Legislature and Council.	Twelve.[3]	7 yrs.	President and council.
Delaware (1776)	An.	3[6]	1	No	Belief in God; Father, Son and Holy Ghost.	3	Not reëligible.	Legislature.	Four.	Good behavior.	Legislature.
Maryland (1776)	An.	5[5]	1	No	Age, 25 yrs. Residence, 5 yrs. £5000 lawful money. Protestant.	1	After 3 terms not reëligible for 4 yrs.	Legislature.	Five.	Good behavior.	Legislature.
Virginia (1776)	An.	4[6]	1	No		1		Legislature.	Eight.	Good behavior.	Legislature.
North Carolina (1776)	An.	1	1	No	Age, 30 yrs. Residence 5 yrs. Freehold, £1000. Belief in God, Protestant religion, and divine authority of Bible.	1	Not more than 3 yrs. out of 6.	Legislature.	Seven.	Good behavior.	Legislature.
South Carolina (1778)	An.	2	1	No[7]	Residence, 10 yrs. £10,000 currency.	2	Not more than 2 yrs. out of 4.	Legislature.	Governor and eight.	Good behavior.	Legislature.
Georgia (1777)	An.		1	No	Residence, 3 yrs.	1	Not more than 1 yr. in 3.	Legislature.	Two from each county.	Good behavior.	Legislature.

[1] Persons voting for governor were obliged in all colonies to have more property than ordinary voters.
[2] Presiding officer of legislature. [3] Also council of censors elected every 7 years. [4] Elected by districts.
[5] Elected by electoral college. [6] One-third or one-fourth renewed annually. [7] Constitution of 1776 gave governor absolute veto.

TABLE II—THE STATE LEGISLATURES (1911)

State	Number Members[1]		Term		Salary	Sessions			Limitations on Powers through		
	Upper House	Lower House	Upper House	Lower House		Annual or Biennial	Limitations on Length[2]	Time for Holding[3]	Provisions of Bills of Rights	Veto and Vote in each House necessary to Overcome Veto	Restrictions on Local and Special Legislation
Maine	20–31 / 31	151	2	2	$150 yr.	bien.	none	1st Wed. Jan.	many	yes, ⅔	
New Hampshire	24	398	2	2	$200 yr.	bien.	none	1st Wed. Jan.	many	yes	
Vermont	30	245	2	2	$3 da.	bien.	none	1st Wed. Oct.[3]	many	yes, maj.[4]	
Massachusetts	40	240	1	1	$750 yr.	an.	none	1st Wed. Jan.[3]	many	yes, ⅔	
Rhode Island	38	1–72 / 72	1	1	$1 da.	an.	none	Last Tues. May[3]	many	none	
Connecticut	8–26 / 24	255	2	2	$300 yr.	bien.	none	Wed. aft., 1st. Mon. Jan.	many	yes, maj.[4]	
New York	50	150	2	1	$1500 yr.	an.	none	1st Tues. Jan.[3]	many	yes, ⅔ el.	many
New Jersey	21	1–60 / 60	3	1	$500 yr.	an.	none	2d Tues. Jan.[3]	many	yes, maj.[4]	many
Pennsylvania	50	200	4	2	$1500 yr.	bien.	none	1st Tues. Jan.	many	yes, ⅔ el.	very many
Delaware	17	35	4	2	$3 da.	bien.	none	1st Tues. Jan.	many	yes, ⅔ el.	
Maryland	26	91	4	2	$5 da.	bien.	90 da.	1st Wed. Jan.	many	yes, ⅗	few
West Virginia	24	65	4	2	$4 da.	bien.	45 da.[2]	2d Mon. Jan.	many	yes, maj. el.	fair no.
Virginia	33–40 / 40	90–100 / 100	4	2	$540 yr.	bien.	90 da.[2]	1st Wed. Dec.	many	yes, ⅔ pres.	few
North Carolina	50	120	2	2	$4 da.	bien.	60 da.	Wed. aft., 1st Mon. Jan.	many	none	very few
South Carolina	41	124	4	2	$4 da.	an.	40 da.	4th Tues. Nov.[3]	many	yes, ⅔	
Georgia	44	175	2	2	$4 da.	an.	50 da.	3d Wed. Oct.[3]	many	yes, ⅔ el.	very few
Florida	32	68	4	2	$6 da.	bien.	60 da.	1st Tues. April	many	yes, ⅔ pres.	many
Alabama	33	100	4	2	$4 da.	bien.	50 da.	Tues. aft., 2d Mon. Nov.[3]	many	yes, maj. el.	
Mississippi	45	133	4	4	$400 yr.	bien.	none	Tues. aft., 1st Mon. Jan.[3]	many	yes	many
Louisiana	36–41 / 39	98–116 / 114	4	4	$5 da.	bien.	60 da.	2d Mon. May[3]	many	yes, ⅔ el.	very many

Texas	31	93–150 128	4	2	$5 da.	bien.	60 da.	2d Tues. Jan.	many	yes, ⅔ pres.	very many
Arkansas	30–35 32	73–100 100	4	2	$6 da.	bien.	60 da.	Tues. aft., 2d Mon. Nov.	many	yes, maj. el.	few
Tennessee	33	99	2	2	$4 da.	bien.	75 da.	1st. Mon. Jan.	many	yes, maj. el.	very few
Kentucky	38	100	4	2	$5 da.	bien.	60 da.[2]	1st Mon. Jan.[3]	many	yes, maj. el.	many
Ohio	31	110	2	2	$600 yr.	bien.	none	1st Mon. Jan.[3]	many	none	
Indiana	50	100	4	2	$6 da.	bien.	60 da.	Thurs. aft., 1st Mon. Jan.	many	yes, maj. el.[4]	fair no.
Illinois	51	153	4	2	$5 da.	bien.	none	Wed. aft., 1st Mon. Jan.	many	yes, ⅔ el.	many
Michigan	32	64–100 100	2	2	$3 da.	bien.	none	1st Wed. Jan.[3]	very few	yes, ⅔ el.	
Wisconsin	33	100	4	2	$500 yr.	bien.	none	1st Mon. Jan.	fair no.	yes, ⅔	few
Minnesota	63	119	4	2	$5 da.	bien.	90 da.	Tues. aft., 1st Mon. Jan.	many	yes, ⅔ pres.	many
Iowa	50	100	4	2	$3 da.	bien.	none	2d Mon. Jan.[3]	many	yes, ⅔ pres.	few
Missouri	34	140	4	2	$5 da.	bien.	70 da.	Wed. aft., Jan. 1.	many	yes, ⅔ el.	very many
Kansas	40	124	4	2	$3 da.	bien.	50 da.	2d Tues. Jan.	many	yes, ⅔ el.	
Nebraska	31	109	2	2	$5 da.	bien.	60 da.[2]	1st Tues. Jan.	many	yes, ⅔ el.	many
South Dakota	45	87	2	2	$5 da.	bien.	60 da.	2d Tues. Jan.	many	yes, ⅔ pres.	fair no.
North Dakota	30–50 31	60–140 62	4	2	$5 da.	bien.	60 da.	2d Tues. Jan.	many	yes, ⅔ el.	many
Montana	24	70	4	2	$6 da.	bien.	60 da.	2d Mon. Jan.	many	yes, ⅔ pres.	very many
Wyoming	19	38	4	2	$5 da.	bien.	40 da.	2d Tues. Jan.	many	yes, ⅔ el.	very many
Colorado	35	65	4	2	$7 da.	bien.	90 da.	Wed. aft., 1st Mon. Jan.	many	yes, ⅔	many
Utah	1–30 18	36–90 45	4	2	$4 da.	bien.	60 da.	2d Mon. Jan.	many	yes, ⅔ el.	fair no.
Nevada	15	30	4	2	$8 da.	bien.	60 da.	1st Mon. Jan.	many	yes, ⅔ el.	many
Idaho	1–24 21	1–60 49	2	2	$5 da.	bien.	60 da.	2d Mon. Dec.	many	yes, ⅔ pres.	many
Washington	34	78	4	2	$5 da.	bien.	90 da.	1st Mon. Jan.	many	yes, ⅔ pres.	fair no.
Oregon	1–30 16	1–60 34	4	2	$3 da.	bien.	40 da.	2d Mon. Jan.	many	yes, ⅔ pres.	fair no.
California	40	80	4	2	$1000 per term	bien.	none	1st Mon. aft. Jan. 1	many	yes, ⅔ el.	many
Oklahoma	40	109	4	2	$6 da.	bien.	60 da.	1st Tues. Jan.	many	yes, ⅔	fair no.

[1] Where two sets are given, the upper one shows constitutional maximum and minimum.

[2] Unless extended by large majority.

[3] Held in even years.

[4] Veto is merely right to demand reconsideration.

TABLE III—THE STATE GOVERNORS AND JUDICIARY (1911)

State	The Governor						Highest State Court		
	Qualifications			Term in Years	Salary per Year	Next Term begins (after 1901)	Number of Judges	Term of Office	Method of Election; by
	Citizenship	Residence in State	Age Years						
Maine	Native born	5 yrs.	30	2	$2000	Jan. 1903	8	7 yrs.	Governor and council.
New Hampshire	Yes	7 yrs.	30	2	$2000	Jan. 1903	7	Until 70 yrs. of age	Governor and council.
Vermont		4 yrs.		2	$1500	Oct. 1902	6	2 yrs.	Legislature.
Massachusetts		7 yrs.		1	$8000	Jan. 1902	7	Good behavior	Governor with consent of council.
Rhode Island				1	$3000	May 1902	7	Until removed by leg.	By two houses in grand committee.
Connecticut	An elector		30	2	$4000	Jan. 1903	5	8 yrs.	Nom. by Governor. Elected by legislature.
New York	Yes	5 yrs.	30	2	$10000	Jan. 1903	8	14 yrs.	Electors of state.
New Jersey	For 20 yrs.	7 yrs.	30	3[1]	$10000	Jan. 1902	9	7 yrs.	Governor with consent of senate.
Pennsylvania	Yes	7 yrs.	30	4	$10000	Jan. 1903	7	21 yrs.	Electors of state.
Delaware	For 12 yrs.	6 yrs.	30	4	$2000	Jan. 1905	6	12 yrs.	Governor with senate.

Maryland	For 10 yrs.	5 yrs.	30	4	$4500	Jan. 1904	8	15 yrs.	Electors of districts.
West Virginia	Yes	5 yrs.	30	4[1]	$2700	Mar. 1905	4	12 yrs.	Electors of state.
Virginia	For 10 yrs.	3 yrs.	30	4[1]	$5000	Jan. 1902	5	12 yrs.	Legislature.
North Carolina	For 5 yrs.	2 yrs.	30	4[1]	$3000	Jan. 1905	5	8 yrs.	Electors of state.
South Carolina	For 5 yrs.	5 yrs.	30	2	$3000	Jan. 1903	4	8 yrs.	Legislature.
Georgia	For 15 yrs.	6 yrs.	30	2[2]	$3000	Nov. 1902	6	6 yrs.	Electors of state.
Florida	For 10 yrs.	5 yrs.		4[1]	$3500	Jan. 1903	3	6 yrs.	Electors of state.
Alabama	For 10 yrs.	7 yrs.	30	2	$3000	Dec. 1902	5	6 yrs.	Electors of state.
Mississippi	For 20 yrs.	5 yrs.	30	4	$3500	Jan. 1904	3	9 yrs.	Electors of districts.
Louisiana	For 10 yrs.	10 yrs.	30	4[1]	$5000	May 1904	5	12 yrs.	Governor and senate.
Texas	Yes	5 yrs.	30	2	$4000	Jan. 1903	3	6 yrs.	Electors of state.
Arkansas	Yes	10 yrs.	30	2	$3500	Jan. 1903	5	8 yrs.	Electors of state.
Tennessee	Yes	7 yrs.	30	2	$4000	Jan. 1903	6	8 yrs.	Electors of state.
Kentucky	Yes	6 yrs.	30	4	$6500	Dec. 1903	7	8 yrs.	Electors of districts.
Ohio				2	$8000	Jan. 1902	6	5 yrs.	Electors of state.
Indiana	For 5 yrs.	5 yrs.	30	4	$5000	Jan. 1905	5	6 yrs.	Electors of state.
Illinois	For 5 yrs.	5 yrs.	30	4	$6000	Jan. 1905	7	9 yrs.	Electors of state.
Michigan	For 5 yrs.	2 yrs.	30	2	$4000	Jan. 1903	5	8 yrs.	Electors of state.
Wisconsin	Yes and elector			2	$5000	Jan. 1903	5	10 yrs.	Electors of state.
Minnesota	Yes	1 yr.	25	2	$5000	Jan. 1903	5	6 yrs.	Electors of state.
Iowa	For 2 yrs.	2 yrs.	30	2	$4100	Jan. 1903	6	6 yrs.	Electors of state.
Missouri	For 10 yrs.	7 yrs.	35	4	$5000	Jan. 1905	7	10 yrs.	Electors of state.

TABLE III — THE STATE GOVERNORS AND JUDICIARY (1911). — *Continued*

State	The Governor						Highest State Court		
	Qualifications			Term in Years	Salary per Year	Next Term begins (after 1901)	Number of Judges	Term of Office	Method of Election; by
	Citizenship	Residence in State	Age Years						
Kansas				2	$3000	Jan. 1903	3	6 yrs.	Electors of state.
Nebraska	For 2 yrs.	2 yrs.	30	2	$2500	Jan. 1903	3	6 yrs.	Electors of state.
South Dakota	Yes	2 yrs.	30	2	$2500	Jan. 1903	3	6 yrs.	Electors of state.
North Dakota	Yes	5 yrs.	30	2	$3000	Jan. 1903	3	6 yrs.	Electors of state.
Montana	Yes	2 yrs.	30	4	$5000	Jan. 1905	3	6 yrs.	Electors of state.
Wyoming	Yes	5 yrs.	30	4	$2500	Jan. 1903	3	8 yrs.	Electors of state.
Colorado	Yes		30	2	$5000	Jan. 1903	3	6 yrs.	Electors of state.
Utah	For 4 yrs.	4 yrs.	30	4	$2000	Jan. 1905	3	6 yrs.	Electors of state.
Nevada	Yes	2 yrs.	25	4	$4000	Jan. 1903	3	6 yrs.	Electors of state.
Idaho	Yes	2 yrs.	30	2	$3000	Jan. 1903	3	6 yrs.	Electors of state.
Washington	Yes			4	$4000	Jan. 1905	5	6 yrs.	Electors of state.
Oregon	Yes	3 yrs.	30	4[2]	$1500	Jan. 1903	5	6 yrs.	Electors of districts.
California	For 5 yrs.	5 yrs.	25	4	$6000	Jan. 1903	7	12 yrs.	Electors of state.
Oklahoma	Yes	3 yrs.	30	4	$4500	Jan. 1915	5	4 yrs.	Electors of state.

[1] Not eligible for next term.

[2] Not eligible for more than two terms (successive).

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[1] The index covers only the numbered sections of the text, all references being to pages. Where the reference covers more than three pages, the Topical Analysis should be consulted.

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